

PROPOSED AMENDED REGULATORY TEXT

Proposed additions are indicated by underline and
deletions are indicated by ~~strike through~~

Title 9. Rehabilitative and Developmental Services
Division 4. Department of Alcohol and Drug Programs
Chapter 3. Programs for Alcohol and Drug Impaired Drivers

Amend 9 CCR § 9795 as follows:

§9795. Application and Purpose of Regulations.

Chapter 3 shall apply to the Department, counties, ~~drinking-driver~~ Driving-Under-the-Influence (DUI) programs that provide alcohol and drug education and counseling services pursuant to Division 10.5 (commencing with Section 11836) of the Health and Safety Code, and to individuals receiving services from those programs.

Unless otherwise indicated, the regulations contained in this Chapter shall apply to both first offender and multiple offender ~~drinking-driver~~ DUI programs.

Note: Authority cited: Section 11836.15, Health and Safety Code; and Section 23161(b), Vehicle Code. Reference: Sections 11836 and 11837, Health and Safety Code; and Sections 23161 and 23181, Vehicle Code.

Amend § 9800 as follows:

§9800. Definitions.

(a) The following definitions shall apply to terminology used in Chapter 3. Terms not defined below may be found in Section 9000, Article 1, Chapter 1, of this Division, or in individual sections of this Chapter if not used elsewhere.

(1) Additional Fee. “Additional fee” means a fee, approved in accordance with the provisions of Section 9878, charged to the participant by the program to recover the cost of any administrative service (such as rescheduling program services, reinstating participants following dismissal, processing transfers to other programs, etc.) provided by the program in addition to program services required in accordance with Article 2 (commencing with Section 9848), Subchapter 3 of this Chapter.

(2) Abstinence. “Abstinence” means the total, round-the-clock avoidance of the use of alcohol and/or illicit drugs through ingestion, inhalation, injection, or other means of intake.

(3) Additional County Requirements. “Additional county requirements” are those requirements a county selects to include as part of the DUI program requirements for that county, which exceed the program services required in Article 2 (commencing with Section 9848), Subchapter 3 of this Chapter.

(4) Ancillary Services. “Ancillary services” are those additional services to which the ~~drinking driver~~ DUI program may refer the participant on a voluntary basis. Such services may include, but need not be limited to, detoxification services, recovery services, treatment services, or family counseling.

(5) Days. “Days” means calendar days, unless otherwise specified.

(6) Driving-Under-the-Influence Program, or Program. “Driving-Under-the-Influence Program” DUI program or “program” or “licensee” means a firm, partnership, association, corporation, or local governmental agency, which has been recommended by the county board of supervisors and subsequently licensed by the Department, in accordance with this Chapter, to provide alcohol and other drug education and counseling services to anyone:

(A) Whose license to drive has been administratively suspended or revoked in accordance with Section 13353.2 of the Vehicle Code;

(B) Who has been convicted for violating Sections 23103.5, 23152 or 23153 of the Vehicle Code; or

(C) Who has been convicted for operating a vessel, water skis, aquaplane, or similar device in violation of Section 655(b), (c), (d), (e), or (f) of the Harbors and Navigation Code.

(7) Driving-Under-the-Influence. “Driving-under-the-influence”, or “DUI”, means:

(A) Driving a motor vehicle in violation of Sections 23103.5, 23140, 23152 and 23153 of the Vehicle Code; or

(B) Operating a vessel, water skis, aquaplane, or similar device in violation of Section 655(b), (c), (d), (e), or (f) of the Harbors and Navigation Code.

(8) Educational Session. “Educational session” means instruction and information presented in a facilitated classroom setting.

(9) Face-to-Face Interview. “Face-to-face interview” means a private, facilitated, individual discussion between the counselor and participant to monitor the

participant's progress in the program, to identify problems which may be barriers to program completion, and to refer the participant to ancillary services when appropriate, based upon the participant's needs.

(10) Facilitated. "Facilitated" means directed or conducted by program staff (e.g., a facilitated discussion would be a discussion directed or conducted by program staff).

(11) Final Approval. "Final approval" means Departmental approval for licensure of a DUI program when the licensee has met all of the licensing standards contained in this Chapter.

(12) First Offender. "First offender" means an individual whose license to drive has been administratively suspended or revoked for, or who has been convicted of, driving-under-the-influence, and the offense did not occur within ~~seven (7)~~ ten (10) years of:

(A) Another driving-under-the-influence offense,

(B) A violation of Section 23103 (as specified in Section 23103.5) of the Vehicle Code, or

(C) A violation of Section 191.5 or ~~Section 192(c)(3)~~ of the Penal Code.

(13) First Offender with Court-Ordered Duration of Participation. First offender with court-ordered duration of participation or enhanced first offender means a person convicted of a first offense of driving-under-the-influence who has been ordered by the court to attend a DUI program for a minimum of 6 months (rather than 3 months), in accordance with Health and Safety Code Section 11837(c).

(14) Fiscal Year. "Fiscal year" means the 12-month period beginning on July 1 and ending on June 30 the following year.

(15) Group Counseling Session. "Group counseling session" means a counselor facilitated group meeting in which participants meet to exchange ideas, to discuss their own behavior and attitudes, and to support and encourage positive changes in each other's lifestyle to facilitate resolution of problems related to the use of alcohol and other drugs.

(16) Illicit Drug. "Illicit Drug" means any substance defined as a drug in Section 11014, Chapter 1, Division 10, Health and Safety Code, except:

(A) Drugs or medications prescribed by a physician or other person authorized to prescribe drugs, in accordance with Section 4036, Chapter 9, Division 2, Business and Professions Code, and used in the dosage and frequency prescribed; or

(B) Over-the-counter drugs or medications used in the dosage and frequency described on the box, bottle, or package insert.

(17) Individual Counseling Session. "Individual counseling session" means a meeting in which a participant and a counselor ~~program staff member~~ interact on an individual basis or through an interpreter to discuss the participant's behavior and attitudes and to support and encourage positive changes in the participant's lifestyle to facilitate resolution of problems related to the use of alcohol and other drugs.

(18) Month. "Month" means the period of time from a specific date in one calendar month to the corresponding date in the following calendar month.

(19) Multiple Offender. "Multiple offender" means an individual whose license to drive has been administratively suspended or revoked for, or who has been convicted of driving-under-the-influence and the offense occurred within ~~seven~~ (7) ten (10) years of:

(A) Another driving-under-the-influence offense,

(B) A violation of Section 23103 (as specified in Section 23103.5) of the Vehicle Code, or

(C) A violation of Section 191.5 or ~~Section 192(c)(3)~~ of the Penal Code.

(20) Participant. "Participant" means any person participating in a DUI program. The term "participant" is used generically throughout this Chapter wherever standards apply to both the first offender and the multiple offender.

(21) Profit. "Profit" means the return received on a business undertaking after all operating expenses have been met, as allowed in normal accounting procedures, which accrues to entrepreneurs as compensation for the assumption of risk in business.

(22) Program Fee. "Program fee" means a fee charged to the participant by the program for program services required in accordance with Article 2 (commencing with Section 9848), Subchapter 3 of this Chapter.

(23) Program Services. "Program services" means all services, which the program is required to provide to the participant in accordance with Article 2 (commencing with Section 9848), Subchapter 3 of this Chapter. Required program services include participant enrollment (Section 9848), assessment of the participant's alcohol or other drug problem (Section 9849), educational

sessions (Section 9852), group counseling sessions (Section 9854), individual counseling (Section 9856), and face-to-face interviews (Section 9858).

(24) Provisional Approval. “Provisional approval” means temporary approval for licensure of a drinking driver program given by the Department for a period not to exceed six months, pending final approval by the Department.

(25) Satellite Location. “Satellite location” means a building, place, or premise used for the provision of Driving-Under-the-Influence Program (DUI) services that is under the direct administrative and professional supervision of a state-licensed DUI program.

(26) “Significant Other” means an individual who the participant designated as having a major influence or importance in his/her life (e.g. spouse, domestic partner, fiancée, friend, etc.)

(27) Standardized Payment Schedule. “Standardized payment schedule” means a document, in accordance with the requirements of Subsection 9878(d), which:

- (A) Describes how the program assesses the program fee and additional fees;
- (B) Lists the amount of the program fee and additional fees charged by the program, the amount of down payment required, the amount and frequency of payments, and the income levels at which the program will allow the participant to pay a maximum fee of no more than \$5.00 per month, to pay a reduced program fee, or to extend payments, in accordance with the provisions of Section 9878; and

(C) Contains a sample of the participant contract and all forms used by the program to determine the program fee, additional fees, down payment, and payment schedule.

(28) Surplus. "Surplus" means the difference between revenues and operating expenses in a nonprofit corporation or public agency.

(29) Unit of Service. "Unit of service" means each service the program is required to provide pursuant to Article 2 (commencing with Section 9848), Subchapter 3 of this Chapter (e.g. enrollment, alcohol or drug assessment, educational or counseling session, face-to-face interview, etc.)

(30) Working Days. "Working Days" means all days that all state agencies are open for business, excluding weekends, holidays or other designated days. For purposes of these regulations, unless otherwise indicated a working day commences at 8:00 a.m. and concludes at 5:00 p.m. The term working day includes the term "business days."

Note: Authority cited: Section 11836.15, Health and Safety Code. Reference: Sections 11836, 11836.15, 11837 and 11837.4, Health and Safety Code; and Sections 23161, 23181 and 23200, Vehicle Code.

Amend § 9801.5 as follows:

9801.5. County Responsibilities.

(a) Consistent with chapter 9, section 11837.6 of the Health and Safety Code, the county board of supervisors shall:

(1) Review, at its option, any new applications for licensure as DUI program and forward all applications recommended for licensure through the county alcohol and drug program administrator to the Department for final review and approval. As part of the recommendation, the county board of supervisors shall include a statement assuring there is a need for a new DUI program in the county and assuring that the establishment of an additional DUI program will not jeopardize the fiscal integrity of existing licensed DUI programs.

(2) Assure the Department in writing of the programmatic and fiscal integrity of the DUI programs the county has recommended for licensure.

(b) The county alcohol and drug program administrator shall:

(1) Monitor to ensure compliance with the regulations contained in this chapter and the requirements in Chapter 9 (commencing with Section 11837.6), Division 10.5 of the Health and Safety Code.

(2) Review any applications requested by the county for licensure as DUI program or proposed changes in the approved plan of operation and forward to the Department all new applications or changes recommended for licensure by the board of supervisors.

(3) Monitor to ensure that approved DUI programs do not utilize other funds administered by the Department for program operations.

(4) Notify the Department when he/she determines that a DUI program is not in compliance with the regulations contained in this chapter.

(5) Monitor to ensure that service providers do not utilize participant fees for purposes other than DUI Program activities, with the exception of allowable profit or surplus.

(6) Review and recommend approval or denial of DUI ~~P~~program fees and additional fees contained in the initial application for licensure and requests from existing licensees for increases in program fees and additional fees.

(7) Assure that each ~~drinking-driver~~ DUI program makes provision for persons who cannot afford to pay program participation fees.

(8) Carry out liaison activities with the courts, the county probation department, DUI programs, and interested parties at the county level.

(9) Develop and insure the implementation of a court referral and tracking system as described in Health and Safety Code Section 11837.2.

(10) Establish a mechanism for reimbursement from client fees of reasonable county costs which are incurred pursuant to this chapter.

Note: Authority cited: Sections 11755, 11836 and 11836.15, Health and Safety Code.

Reference: Sections 11836, 11837.2, 11837.6, 11837.7 and 11837.8, Health and Safety Code.

Amend § 9801.6 as follows:

§ 9801.6. ~~Drinking-Driver~~ DUI Program Responsibilities.

(a) The ~~drinking-driver~~ DUI program shall:

(1) Maintain the program services in compliance with article 2, subchapter 3 of this chapter and with the program's application for licensure which was approved by the county and the Department.

(2) Provide the county alcohol and drug program administrator and the Department access to all programmatic and fiscal records necessary to conduct county monitoring and State approval activities, including evaluation. Said access shall not conflict with any local, state, or federal confidentiality regulations.

Note: Authority cited: Sections 11755 and 11836.15, Health and Safety Code.

Reference: Section 11837.4, Health and Safety Code.

Amend Subchapter 2 as follows:

Subchapter 2. Licensure of ~~Drinking Driver~~ DUI Programs

Amend § 9804 as follows:

§ 9804. Content of Application.

(a) The applicant shall submit a separate application for each site, except for satellite sites, where services are to be provided.

(b) Each application ~~and~~ for licensure shall include the following information:

(1) The name of the county and DUI program in which the applicant will be providing services, and whether the applicant is applying for licensure as a ~~three-month, first offender,~~ 18-month, or 30-month program; ;

(2) The legal name of the applicant and the name the licensee will use to conduct business; ;

(3) The telephone number and mailing address of the applicant, and the telephone number and address of the program location; ;

(4) The business status (i.e., individual owner, partnership, nonprofit or for-profit corporation, public agency, or another specified entity) under which the applicant will operate the program;

(5) The name(s) and address(es) of any other licensed programs owned or operated by the applicant(s) within the last five years;

(6) The name, address, and telephone number of the program director;

(7) If the applicant is a partnership, the name and principal business address of each partner, and a copy of the partnership agreement as filed with the county or state, as applicable;

(8) If the applicant is a corporation or association, the name and address for the corporation or association; the name and title of the officer or employee who acts on behalf of the corporation or association; and a copy of the articles of incorporation and bylaws;

(9) If the applicant is a public agency, the type of agency (~~i.e.~~, i.e. county, city, or other specified), the name of the department, and address;

(10) The name(s), title, education and experience of the program director in accordance with Section 9846 of this Chapter;

(11) Written assurance that the DUI program will not discriminate in employment practices and in provision of benefits and services on the basis of race, color,

national origin, religion, sex, or mental or physical disabilities pursuant to Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, California Government Code section 11135, et seq., and other applicable state and federal laws; ;

(12) A statement, signed and dated by the licensee or the authorized representative of the licensee, declaring under penalty of perjury that all information submitted to the Department is true and correct to the best of the licensee's knowledge; ;

(13) A signed and dated financial statement with an itemized listing of the program's assets, liabilities, and equity;

(14) A line item budget which includes fiscal information in the categories of personal services, operating expenses, equipment, equipment and facility depreciation schedules, revenue, and profit or surplus; and

(15) The signature of the applicant as follows:

(A) For partnerships, each partner shall sign the application.

(B) If the applicant is a firm, association, corporation, county, city, public agency, or other governmental entity, the application shall be signed by the chief executive officer or the individual legally responsible for representing the firm, association, corporation, county, city, public agency, or other governmental entity.

Note: Authority cited: Sections 11755, 11835, and 11836.15, Health and Safety Code.

Reference: Sections 11836.12, 11836.15 and 11837.4, Health and Safety Code.

Amend § 9812 as follows:

§ 9812. State Review and Approval.

(a) The Department shall review DUI program applications selected and recommended for licensure by the county board of supervisors to determine whether the application complies with Section 9804.

(b) Upon recommendation of the county board of supervisors, the Department shall review any proposed change in an existing DUI program's operation plans.

(c) The Department may approve specific elements of the DUI programs which comply with the regulations contained in this chapter and may disapprove those elements of the DUI program which do not comply with the regulations contained in this chapter, except when any element of the administration of the DUI program does not assure the fiscal integrity of the program.

(d) The Department may grant provisional approval to a DUI program or any element thereof, based on documentation submitted by the county board of supervisors that the ~~drinking-driver~~ DUI program ~~the~~ application complies with the regulations contained in this chapter.

Note: Authority cited: Sections 11755 and 11836.15, Health and Safety Code.

Reference: Sections 11836, 11836.12, 11836.14 and 11837.4, Health and Safety Code.

Amend § 9816 as follows:

§ 9816. Approval/Denial of Licensure.

(a) Within six months of provisional approval the Department shall approve licensure for a ~~drinking-driver~~ DUI program if the Department has determined, on the basis of an on-site review, ~~that~~ the program is operating in compliance with the regulations contained in this chapter.

(1) The Department shall notify the county alcohol and drug program administrator in writing at least 14 days prior to any on-site licensure review. Whenever possible, the county alcohol and drug program administrator shall accompany Department staff during the on-site review.

(2) The Department shall approve or deny licensure within six months of the date of provisional approval. Failure to deny within the six month period shall constitute approval.

(b) The Department shall provide notice of provisional and final approval of licensure by certified mail to the county alcohol and drug program administrator, with copies to the county board of supervisors, the Department of Motor Vehicles (DMV), and the ~~drinking-driver~~ DUI program within 15 days of the granting of such approval. Approval shall be effective as of the date of the notice.

(c) The Department shall provide notice of denial of licensure by certified mail to the county alcohol and drug program administrator, with copies to the county board of supervisors, the DMV, and the ~~drinking-driver~~ DUI program within 15

days of denial of licensure. Denial shall be effective the date of receipt of the letter by the service provider.

(d) At the time of approval of licensure, the Department shall provide the ~~drinking driver~~ DUI program with a certificate of licensure for display at site locations.

(e) At least once per year, the Department shall publish a listing of licensed service providers for distribution to the courts and other interested parties.

Note: Authority cited: Sections 11755 and 11836.15, Health and Safety Code.

Reference: Sections 11836, 11836.12, 11836.14 and 11837.4, Health and Safety Code.

Amend § 9820 as follows:

§ 9820. Extension of Period of Licensure.

(a) To extend the period of licensure, the licensee shall:

(1) Pay all:

(A) Licensing fees assessed in accordance with Section ~~9878~~ 9822,

(B) Fines assessed in accordance with Section 11837.5 of the Health and Safety Code and adjudicated in accordance with Section ~~9830~~ 9836, and

(C) Civil penalties assessed in accordance with Section 9827 and adjudicated in accordance with Section ~~9830~~ 9836; and

(D) County administration and monitoring fees which are due and payable in accordance with Section 9878(m).

(2) Update the information contained in the application for licensure, if the licensee submitted an application for licensure in or after October 1993; or

(3) Submit an application for licensure, in accordance with Section 9804, if the licensee submitted a proposal for licensure prior to October 1993 which was not subsequently updated by an application for licensure.

(b) At least 120 days prior to the expiration date noted on the license, the Department shall send a notice to the licensee which shall:

(1) Inform the licensee of the date when the current period of licensure will expire as specified on the license;

(2) Inform the licensee that the period of licensure will be extended if, by the date specified on the notice, the licensee complies with Subsection (a) of this regulation; and

(3) Notify the licensee that failure to comply with the requirements of Subsection (a) of this regulation, as stated in the notice, will result in automatic expiration of the license, and that continued operation of the program beyond the date of expiration is prohibited by Section 11836.10 of the Health and Safety Code and Section 9802 of this Chapter.

(c) If the licensee complies with the requirements of Subsection (a) of this regulation as stated in the notice, the Department shall automatically extend the period of licensure, unless the Department has enjoined operation of the program in accordance with Section 9829.

(d) If the licensee fails to comply with the requirements of Subsection (a) of this regulation as stated in the notice, the Department shall not extend the period of licensure and the license shall automatically expire as of the date specified on the license.

(e) Failure to update the information contained in the application for licensure and pay licensing fees, fines, and/or civil penalties by the date the period of licensure expires shall be deemed to be a voluntary deactivation of the license.

(f) In the event that the licensee voluntarily deactivates the license, in order to reactivate the license the licensee shall:

(1) Submit an application for extension of licensure (in accordance with Subsection (a)(2) of this regulation) directly to the Department

(2) Pay any outstanding licensing fees, fines, and civil penalties adjudicated in accordance with Section ~~9830~~ 9836, and.

(3) Pay any outstanding county administration and monitoring fees due and payable in accordance with Section 9878(m).

(g) Failure to reactivate a license within 90 days of the date the period of licensure expired shall be deemed to be a voluntary relinquishment of the license. In the event that the licensee voluntarily relinquishes the license, in order to reapply for licensure, the licensee shall:

(1) Submit a new application for licensure, through the county alcohol and drug program administrator, in accordance with Article 2 (commencing with Section 9804) of this chapter, and

(2) Pay any outstanding licensing fees, fines, and civil penalties adjudicated in accordance with Section ~~9830~~ 9836.

Note: Authority cited: Sections 11755 and 11836.15, Health and Safety Code.

Reference: Sections 11836, 11836.10, 11836.12, 11836.15, 11837.5 and 11838.4, Health and Safety Code.

Amend § 9822 as follows:

§ 9822. Program Licensing Fees.

(a) The Department may assess an annual licensing fee to cover the projected cost of licensing DUI programs.

(b) The Department shall determine the license fee annually, not later than April 30 of each year, in an amount sufficient to cover the projected costs of administering the licensure of DUI programs for the forthcoming fiscal year commencing on the first day of July and concluding on the last day of June. The license fee shall be an amount for each participant's initial enrollment, determined by dividing the projected costs by the number of participant enrollments and rounding up to the next dollar. Projected costs (including expenditures and encumbrances) and participant enrollments used in the calculation shall be the total actual costs and enrollments, respectively, for the most recent 12-month period for which both sets of data are available. For example, if projected costs were anticipated to be \$1,612,593 and the total number of participants were 130,992 the license fee per participant would be \$12.31 rounded up to \$13.

(c) ~~Not~~ No later than April 30 of each year ~~following the effective date of this regulation,~~ the department shall give written notice to DUI program licensees of the license fee for the forthcoming fiscal year and the manner in which it was

calculated, including data used in making the calculation. Notification need not be issued if the fee does not change from the current fiscal year.

(d) The license fee shall be a set amount assessed for each participant's initial enrollment. The total amount of fees owed to the Department by a licensee shall be determined by multiplying the total number of new enrollments for the applicable quarter in the licensed program by the amount of the license fee per enrollee. For example, if the licensee enrolled 100 participants during the quarter and the license fee is \$13 per enrollment, the amount of the total fee would be \$1,300.

(e) Failure to submit quarterly enrollment reports and pay quarterly license fees by the 30th day following the close of each quarter (i.e. September 30th, December 31st, March 31st, and June 30th) shall result in the issuance of a notice of deficiency in accordance with Section 9824. For example, if the quarter first quarter fees are not paid by October 30, a notice of deficiency will be sent to the licensee.

Note: Authority cited: Section 11836.15, Health and Safety Code. Reference: Section 11837.4, Health and Safety Code.

Amend § 9829 as follows:

§ 9829. Unlicensed Programs.

(a) If an unlicensed program provides program services, the program is operating in violation of Section 11836.10 of the Health and Safety Code and Section 9802 of this Chapter.

(b) If a program is alleged to be operating without a license, the Department shall conduct an investigation to substantiate the allegation.

(c) If the Department determines, as the result of its investigation, that the program is operating without a license, the Department shall deliver to the operator of the program, in person or by certified mail, a notice which shall notify the operator of the program that the program is operating without a license, in violation of Section 11836.10 of the Health and Safety Code and Section 9802 of this Chapter.

(1) Unless an application for licensure was denied or the program license was suspended or revoked within two years of the date of the notice, the Department shall order the operator of the unlicensed program to apply for licensure or cease operation immediately.

(2) If the application for licensure was denied or the program license was suspended or revoked within two years of the date of notice, the Department shall order the operator of the unlicensed program to cease operation immediately.

(3) The notice shall specify that the Department will take action in accordance with Subsection (d) of this regulation if the facility fails to cease operation or apply for a license immediately.

(d) If the program fails to cease operation immediately the Department may:

(1) Assess a civil penalty of \$200 per day against the operator of the unlicensed program.

(A) The civil penalty shall continue to accrue until the unlicensed program ceases operation.

(B) If the operator or representative of the unlicensed program provides written notification to the Department that the program has ceased operation, the civil penalty shall cease as of the date the Department receives the notification.

(C) The Department may conduct a site visit to verify that the program is no longer in operation. If the site visit indicates that the unlicensed program is still in operation, the Department shall assess the \$200 per day civil penalty without interruption from the date of the initial assessment.

(2) Enjoin operation of the unlicensed program in the superior court in and for the county in which the violation occurred. Any such action shall conform to the requirements of Chapter 3 (commencing with Section 525), Title 7, Part 2 of the Code of Civil Procedures, except that the Director shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or irreparable damage or loss.

(e) All civil penalties assessed in accordance with this regulation and adjudicated in accordance with Section ~~9830~~ 9836 shall be due and payable upon receipt of a notice of payment issued by the Department, and shall be paid by certified check or money order made payable to the Department of Alcohol and Drug Programs.

Note: Authority cited: Sections 11755 and 11836.15, Health and Safety Code.
Reference: Sections 11836, 11836.10, 11838.3, 11838.4, 11838.5, 11838.10 and 11838.11, Health and Safety Code.

Amend § 9836 as follows:

§ 9836. Administrative Review of Licensing Actions.

(a) Applicants for licensure and licensees may appeal a notice of licensing actions by forwarding a written request for review to the Director, Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA ~~95814~~ 95811. As used in this regulation, “licensing action” means denial of an application, denial of a request for renewal of licensure, denial of a request to open a satellite location, assessment of a civil penalty, or suspension or revocation of licensure.

(b) The written request for review shall be postmarked within ~~fifteen~~ (15) working days of receipt of the written notice of licensing action. The written request for review shall:

- (1) Identify the statute(s) or regulation(s) at issue and the legal basis for the licensee's appeal;
- (2) State the facts supporting the licensee's position; and
- (3) State whether the applicant for licensure ~~of~~ or licensee waives an informal conference and prefers to proceed directly with an administrative hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code.

(c) Failure to submit the written request for review, pursuant to Subsection (b) of this regulation, shall be deemed a waiver of administrative review and the action shall be deemed final.

(d) The Director or the Director's designee shall schedule an informal conference with the licensee, unless the Director or the Director's designee and the licensee agree to settle the matter based upon the information submitted with the request for review. The informal conference shall be scheduled within 15 working days and held within 45 working days of receipt of the request for review.

(e) Failure to schedule the informal conference within ~~fifteen~~ {15} working days or hold the informal conference within forty-five {45} working days of the receipt of the request shall be deemed a withdrawal of the licensing action by the Department unless the licensee:

(1) Fails to attend the conference as scheduled, in which case the appeal shall be considered withdrawn and the action shall be deemed final.

(2) Waives the 15 or 45 working day requirement, or

(3) Waives informal conference.

(f) The licensee shall have the following rights at the informal conference:

(1) The right to be represented by legal counsel.

(2) The right to present oral and written evidence.

(3) The right to explain any mitigating circumstances.

(g) The representatives of the Department who issued the notice of licensing action shall attend the informal conference and present evidence and information, oral or written, in substantiation of the alleged violation.

(h) The conference shall be conducted as an informal proceeding, and shall not be conducted in the manner of a judicial hearing under the Administrative Procedure Act [Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code], and need not be conducted according to the technical rules relating to evidence and witnesses.

(i) Neither the licensee nor the Department shall have the right to subpoena any witness to attend the informal conference. However, both the licensee and the Department may present any witness to present evidence and information on its behalf at the conference.

(j) The proceedings at the informal conference may be recorded by either party on audio tape.

(k) The decision to affirm, modify, or dismiss the notice of licensing action shall be mailed by the Director or the Director's designee to the licensee, postmarked no later than 10 working days from the date of the informal conference. The decision shall state with particularity the reason for affirming, modifying, or dismissing the notice of licensing action. A copy of the decision shall be transmitted to each party of the appeal.

(l) If the licensing action, discussed at the informal conference, was assessed for failure to correct a Class A violation, the decision made at the informal conference shall be deemed final and not subject to further review.

(m) If the licensing action is not a Class A violation the decision from the informal conference shall include a statement from the Director or the Director's designee notifying the licensee of the right of further administrative appeal to the decision

made at the informal conference. A hearing may be requested in accordance with Chapter 5 (commencing with Section 11500) Part 1, Division 3, Title 2 of the Government Code.

(1) The licensee may appeal the decision made at the informal conference or waive the informal conference and proceed directly to administrative hearing by submitting a written request to the Director of the Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA ~~95814~~ 95811, postmarked no later than 15 working days from the date of receipt by the applicant for licensure or licensee of the informal conference decision or the notice of licensing action, as appropriate. Upon receipt of the request for appeal, the Department shall initiate administrative review and request that the matter be set for hearing. The Department shall notify the licensee of the time and place of the hearing.

(2) Failure of the licensee to timely submit the written request for an administrative hearing shall be deemed a waiver of further administrative review and the decision of the Director or the Director's designee shall be deemed the final decision of the Department.

(3) In the event the licensee appeals the Department's proposed assessment of civil penalties, collection of the civil penalties shall be subject to the outcome of the final administrative appeal.

(4) A licensing action shall be deemed final if:

(A) The licensee fails to appeal the licensing action in a timely manner, pursuant to Subsections (c) and (m)(2) of this regulation; or

(B) A final determination is made in accordance with this regulation or, if applicable, with Section 11517 of the Government Code.

(5) After deemed final, the civil penalty shall be paid to the Department within ~~sixty (60)~~ days of receipt of the notice of final adjudication. Failure to pay the civil penalty within ~~sixty (60)~~ days of receipt of the notice of final adjudication shall result in automatic termination of the license.

Note: Authority cited: Sections 11755, 11834.50 and 11835, Health and Safety Code.

Reference: Sections 11834.34, 11834.36, 11834.37, 11834.45 and 11834.50, Health and Safety Code; and Chapter 5 (commencing with Section 11500), Part 1, Division 3, of Title 2, Government Code.

Amend § 9838 as follows:

§ 9838. Contingency Service Plan.

(a) The county alcohol and drug program administrator shall notify the Department by certified mail within seven days if a ~~drinking driver~~ DUI program is unable to provide services to program participants. The county alcohol and drug program administrator shall provide the Department with an interim plan for continuing services for participants and for supervising such participants.

(b) Emergency service providers shall not accept new enrollments until they have become licensed by the Department pursuant to the provisions of this chapter.

(c) The Department shall approve emergency services for no longer than six months from the date approval was granted.

Note: Authority cited: Sections 11755 and 11836.15, Health and Safety Code.
Reference: Sections 11837.2, 11837.4, 11837.5 and 11837.6, Health and Safety Code;
and Section 13352.5, Vehicle Code.

Amend § 9846 as follows:

§ 9846. Staff Qualifications and Function.

(a) The DUI program administrator shall have the following minimum experience and/or education:

- (1) Two years of experience providing alcohol and/or other drug treatment or recovery services,
- (2) One year of experience supervising personnel, and
- (3) One year of experience managing an accounting system, or preparing or directing the preparation of budgets or cost reports. Satisfactory completion of two college-level courses in accounting may be substituted for the one year of experience required in this subsection. As used in this regulation, “satisfactory completion” means attainment of a grade of “C” or better.

(b) Program staff who conduct:

1. Educational sessions shall have a minimum of ~~two~~ one years of experience in providing alcohol and/or drug education and information to persons with alcohol and/or other drug problems in a classroom setting.
2. Counseling sessions (intake interviews, face-to-face interviews, group and individual counseling) shall have a minimum of two years of experience in

providing alcohol and/or drug counseling services to persons with alcohol and/or other drug problems in group settings.

(c) ~~Except for new hires, As specified in Section 13035(e) (f), by April 1, 2010~~ all program staff who provide counseling services (as defined in Section 13005(a)(4)) shall be licensed, certified, or registered to obtain certification pursuant to Chapter 8 (commencing with Section 13000).

(d) Program staff who provide counseling services (as defined in Section 13005) shall comply with the code of conduct, pursuant to Section 13060, developed by the organization by which they were certified or registered.

(e) Volunteers may assist in conducting educational sessions, group counseling sessions, intake interviews, face-to-face interviews, or assessments of alcohol and/or other drug problems.

(1) Volunteers assisting in the provision of educational sessions shall be under the direct supervision of a staff member who meets the requirements of Subsections (b) and (c) of this regulation. Volunteers assisting in the provision of counseling services shall be under the direct supervision of a certified counselor and shall adhere to the code of conduct specified in Section 13060.

(2) Volunteers shall not provide services unless the supervising staff member is present in the room during the provision of services.

(f) The program may employ interns to conduct counseling or educational sessions. As used in this regulation, an “intern” is an entry level, paid staff member who does not have a minimum of one year ~~2,080 hours~~ of experience in providing educational services or two years of experience in providing counseling

services to persons with alcohol and/or other drug problems. Prior to employing interns, the licensee shall provide the Department with a description of its intern program, which shall comply with the following requirements:

(1) Interns may not comprise more than ~~twenty~~ 20 percent of the program's counseling staff.

(2) The licensee shall designate a staff member who is licensed or certified pursuant to Chapter 8 (commencing with Section 13000) as the coordinator of its intern program.

(3) Prior to conducting services without direct supervision, each intern shall observe at least three hours of face-to-face interviews, 12 hours of educational classes conducted by staff who meet the requirements of (b) of this regulation, and 20 hours of group counseling sessions conducted by a certified counselor. The licensee shall document the sessions in the intern's personnel record.

(4) The intern coordinator shall provide individual progress reviews with each intern on a weekly basis as long as the intern is employed as an intern or until the intern meets the requirements of (b) and (c) of this section. The licensee shall document individual progress reviews in the intern's personnel record.

(5) Administration and associated costs of interns may be allocated over as many alcohol and drug treatment programs within a given agency as use interns, proportionate to the number of interns used by each program.

(g) As used in this regulation, "a year of experience" means 1,776 total hours of full or part time, compensated or uncompensated, work experience.

(h) The licensee shall maintain personnel records for all staff, including DUI program administrators, containing:

(1) Name, address, telephone number, position, duties, and date of employment;

~~and~~

(2) Resumes, applications, and/or transcripts documenting work experience and education used to meet the requirements of this regulation– ; and

(3) Personnel records for staff who provide counseling services (as defined in Section 13005) shall also contain:

(A) Written documentation of licensure, certification, or registration to obtain certification pursuant to Chapter 8 (commencing with Section 13000); and

(B) A copy of the code of conduct of the registrant's or certified AOD counselor's certifying organization pursuant to Section 13060.

Note: Authority cited: Sections 11755 and 11836.15, Health and Safety Code.

Reference: Section 11836.15, Health and Safety Code.

Amend § 9848 as follows:

§ 9848. Participant Enrollment.

(a) The licensee may enroll any person who presents documentation from the court or the Department of Motor Vehicles verifying his/her arrest or conviction for one of the DUI violations specified in Health and Safety Code Section 11836(a). Such documentation shall indicate whether the offense is a first, second or third DUI violation.

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(b) The licensee may enroll and provide services to persons referred from another state for conviction of a DUI offense. The person must provide documentation from the state making the referral, indicating the requirement to attend and either the number of hours of program services or the program type required.

(c) The licensee may accept a participant for enrollment after the date specified by the court, provided that the licensee notifies the court of the enrollment through an established court referral and tracking system.

(d) Before a potential participant receives services from a DUI program, the licensee shall conduct an intake interview and enroll the participant in the program.

~~(e) The intake interview shall consist of a discussion of all of the following:~~

~~(1) Goals and objectives for participation in the program, including abstinence from the use of alcohol and/or illicit drugs as a goal during the duration of participation in the program. The licensee shall provide the participant with materials which describe how abstinence contributes to a healthy lifestyle;~~

~~(2) Counseling, education, and face-to-face interview requirements;~~

~~(3) Attendance requirements and procedure for requesting a leave of absence;~~

~~(4) Program fees and payment schedules;~~

~~(5) Location and schedule of program services;~~

~~(6) Reasons for dismissal from the program; and~~

~~(7) The program's participant rules. The participant shall sign and date a copy of the program rules and the licensee shall retain the signed copy in the participant's record.~~

~~(f) The licensee shall enroll a participant by completing:~~

~~(1) Intake forms required by the drinking driver program, the county, the Department, and the Department of Motor Vehicles;~~

~~(2) A participant contract, which shall list the services to be provided, program fees, payment schedule, attendance requirements, and reasons for dismissal from the program, as stated in Section 9886.~~

~~(A) The intake interviewer shall explain and date the contract.~~

~~(B) The intake interviewer and the participant shall sign the contract.~~

~~(C) The intake interviewer shall give one copy of the signed, dated, contract to the participant and shall retain one copy in the participant's record, pursuant to Section 9866.~~

(1) Program counseling staff, who meet the requirements of Section 9846(c) and (d) shall complete the intake interview, which shall consist of:

(A) A discussion of goals and objectives for participation in the program, including abstinence from the use of alcohol and/or illicit drugs as a goal during the duration of participation in the program.

(B) Providing the participant with materials which describe how abstinence contributes to a healthy lifestyle.

(C) Explaining the counseling, education, and face-to-face interview requirements; attendance requirements; procedures for requesting a leave of absence; and reasons for dismissal from the program.

(D) Completing a participant contract listing the services to be provided, program rules, grievance procedures, program fees, and payment schedule. The counselor shall:

(1) Explain and date the contract;

(2) Sign the contract and require the participant to sign the contract;

(3) Give a copy of the signed, dated contract to the participant and retain a copy in the participant's record.

(2) Program staff shall enroll the participant by:

(A) Completing administrative forms required by the DUI program, the Department, county, and Department of Motor Vehicles.

(B) Scheduling program services; and

(C) Providing the participant with a written list of the date, time, and location of program activities the participant is scheduled to attend.

(e) The licensee shall provide the contract, ~~fee agreement~~, and all other documents that require participant signature in all languages in which the licensee provides services.

~~(h) Program staff who conduct the intake interview and explain the participant contract shall meet the qualification standards listed in Section 9846. Volunteers, interns, or clerical staff may complete forms and paperwork.~~

~~(h) (f) At the time the participant enrolls, the licensee shall give the participant a written list of the date, time, and location of program activities the participant is scheduled to attend. The licensee shall begin providing services (i.e. face-to-face interviews, educational sessions, and group counseling sessions) within 21 days of the date that it enrolls a participant.~~

Note: Authority cited: Sections 11755 and 11836.15, Health and Safety Code.
Reference: Sections 11836.15 and 11837.4, Health and Safety Code; Sections 23161 and 23181, Vehicle Code.

Amend § 9849 as follows:

§ 9849. Assessment of Participant's Alcohol or Drug Problem.

(a) Within the first 60 days of participation, the ~~program~~ licensee shall complete an assessment of each participant's alcohol or drug use ~~problem~~. The assessment shall address patterns and history of alcohol and other drug use, addiction treatment history, gender, age, work status, family substance abuse history, legal history, and current health status.

(b) Alcohol and drug assessments shall be conducted by program ~~staff members~~ counselors who meet the staff qualification standards listed in Section 9846(b), (c), and (d).

(c) The program counselor conducting the assessment shall discuss the results of the alcohol or drug assessment with the participant.

(d) As part of the assessment, the counselor shall recommend any ancillary services he/she thinks would be potentially beneficial to the participant. Ancillary services recommended should be appropriate to the individual participant and available nearby. The ~~program~~ counselor shall record the results of the participant's alcohol or drug assessment, the follow up discussion, and the recommendations for ancillary services in the participant's case record. The referral process for ancillary services must be in accordance with section 9862.

(e) The participant and the counselor shall sign and date the results of the assessment and follow up discussion.

Note: Authority cited: Section 11836.15, Health and Safety Code; and Section 23161(b) Vehicle Code. Reference: Section 11836.15, Health and Safety Code; and Sections 23161 and 23181, Vehicle Code.

Amend § 9851 as follows:

§ 9851. Program Services To Be Provided.

(a) The licensee shall require a participant enrolled in a program pursuant to Vehicle Code Section 23103.5(e) or 23140 to complete 12 hours of educational sessions, provided in accordance with Section 9852.

(b) The licensee shall require a participant enrolled in a three-month first offender program to complete the following:

(1) Twelve hours of educational sessions, provided in accordance with Section 9852.

(2) Ten hours of group counseling sessions, provided in accordance with Section 9854.

(3) Eight additional hours of program services, consisting of educational sessions, group counseling sessions, or a combination of the two, at the option of the licensee and as approved by the county alcohol and drug program administrator.

(4) A minimum of three face-to-face interviews, provided in accordance with Section 9858. The licensee shall conduct one face-to-face interview ~~at the beginning~~ within 21 days of enrollment, at the mid-point, and at the end of the program. The final face-to-face interview shall serve as the exit interview. At the licensee's option, more than three face-to-face interviews may be provided so long as the participant is not charged for the additional face-to-face interviews.

(5) Any additional county requirements approved in accordance with Section 9860.

(c) The licensee shall require a first offender with court-ordered duration of participation to participate in the program for six months or longer as ordered by the court. During that time the licensee shall require the participant to complete the following:

(1) A minimum of 12 hours of educational sessions, provided in accordance with Section 9852.

(2) A minimum of 28 hours of group counseling sessions, provided in accordance with Section 9854.

(3) A minimum of four face-to-face interviews, provided in accordance with Section 9858. The licensee shall conduct the first face-to-face interview ~~at intake~~ within 21 days of enrollment. The licensee shall conduct one face-to-face interview at the end of the second month, at the end of the fourth month, and at the end of the program. The final face-to-face interview shall serve as the exit interview.

(4) Four additional hours of program services, consisting of educational sessions, group counseling sessions, face-to-face interviews or a combination of the three, at the option of the licensee and as approved by the county alcohol and drug program administrator.

(5) Any additional county requirements approved in accordance with Section 9860.

(d) The licensee shall require a ~~participant enrolled in an 18-month multiple offender program~~ first offender with court-ordered duration of participation to participate in the program for nine months or longer as ordered by the court. During that time the licensee shall require the participant to complete the following:

(1) ~~During the first 12 months of participation in an 18-month program, the licensee shall require the participant to complete a core program phase consisting of:~~ A minimum of 12 hours of educational sessions provided in accordance with Section 9852.

(2) A minimum of 44 hours of group counseling sessions provided in accordance with Section 9854.

(3) A minimum of five face-to-face interviews provided in accordance with Section 9858. The licensee shall conduct the first face-to-face interview within 21 days of the enrollment and at the end of every other month thereafter. The licensee shall also conduct an exit interview at the end of the program.

(4) Four additional hours of program services, consisting of educational sessions, group counseling sessions, face-to-face interviews by the county alcohol and drug program administrator.

(5) Any additional requirements approved in accordance with Section 9860.

(e) The licensee shall require a participant enrolled in an 18-month multiple offender program to complete the following:

(1) During the first 12 months of participation in an 18-month program, the licensee shall require the participant to complete a core program phase consisting of:

(A) Twelve hours of ~~alcohol~~ alcohol and other ~~drug-related~~ drug related educational sessions in accordance with Section 9852.

(B) Fifty-two hours of group counseling sessions in accordance with Section 9854.

(C) One face-to-face interview every other week from the initial date of enrollment through the first 12 months of participation, or until completion of the educational and group counseling sessions required in (d)(1)(A) and (B) immediately above. In either instance, the licensee shall require each participant to attend a minimum of 24 face to face interviews. Face-to-face interviews shall be provided in accordance with Section 9858. If the participant takes longer than

12 months to complete the educational and group counseling sessions required in (d)(1)(A) and (B) the licensee may charge for any additional face-to-face interviews provided based on the approved unit of service fee for face-to-face interviews.

(D) Any additional county requirements approved pursuant to Section 9860.

(2) During the last six months of participation in an 18-month program, the licensee shall require the participant to complete a community re-entry phase, consisting of participation in group counseling, self-help ~~groups~~ meetings, employment, and other areas of self-improvement.

(A) The licensee shall monitor the participant's progress during the community re-entry phase.

(B) The licensee shall provide no more than six hours of monitoring.

(C) The licensee shall not allow the participant to begin the community re-entry phase until the participant has completed the core program requirements specified in (d)(1) of this regulation.

~~(e)~~ (f) The licensee shall require a participant enrolled in a 30-month multiple offender program to complete the following:

(1) During the first 18 months of participation in a 30-month program, the licensee shall require the participant to complete a core program consisting of:

(A) A minimum of 12 hours of educational sessions, provided in accordance with Section 9852.

(B) A minimum of 78 hours of group counseling sessions, provided in accordance with Section 9854.

(C) One face-to-face interview provided every other week from the initial date of enrollment through the first 18 months of participation, or until completion of the educational and group counseling sessions specified in (e)(1)(A) and (B) immediately above. In either instance, the licensee shall require each participant to attend a minimum of 39 face to face interviews. Face-to-face interviews shall be conducted in accordance with Section 9858. The program may charge for additional face-to-face interviews based on the approved unit of service fee for face-to-face interviews.

~~(D) Any additional county requirements approved pursuant to Section 9860. A~~
compendium of evidence, on a tri-monthly basis, of performance of voluntary community service for one-half of the time served (not less than 120 hours and not more than 300 hours, as determined by the court) demonstrating:

(1) The prevention of driving-under-the-influence, promotion of safe driving, and responsible attitude toward the use of chemicals of any kind.

(2) Significant improvement in occupational performance (including efforts to obtain gainful employment), physical and mental health, family relations, and financial affairs and economic stability.

(E) Any additional county requirements approved pursuant to Section 9860.

~~(3)~~ (2) During the last 12 months of participation in a 30-month program, the licensee shall monitor the participant's completion of community service activities pursuant to Health and Safety Code Section 11837.4(b)(3).

(a) Maintain a compendium of evidence of performance of voluntary community service for one-half of the time served, on a tri-monthly basis, demonstrating:

(1) The prevention of driving-under-the-influence, promotion of safe driving, and responsible attitude toward the use of chemicals of any kind;

(2) Significant improvement in occupational performance (including efforts to obtain gainful employment), physical and mental health, family relations, and financial affairs and economic stability.

(3) The licensee shall, unless prohibited by the court, make provisions for a participant to voluntarily enter a licensed chemical dependency recovery hospital or residential treatment program, licensed by the State of California, and to receive three weeks of program participation credit for each week of treatment not to exceed 12 weeks of credit, but only if the treatment is at least two weeks in duration. The program shall document evidence of the treatment in the participant's life.

Note: Authority cited: Section 11836.15, Health and Safety Code. Reference: Sections 11836.15, 11837 and 11837.4, Health and Safety Code.

Amend section 9852 as follows:

§ 9852. Educational Sessions.

(a) Educational sessions shall be no less than one hour and no more than two hours in length. Time allowed for breaks shall not be counted toward meeting the number of hours for educational sessions in accordance with Section 9851.

(b) Program staff who conduct educational sessions shall meet the staff qualifications required in Section 9846(c).

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(c) Educational sessions shall be informational in content and instructional in manner of presentation. Educational sessions may consist of lectures, seminars, films, audio tapes, written exercises, or any combination thereof. Educational sessions shall include information regarding the following topics:

(1) The use and effects of alcohol and other drugs.

(2) The nature of addiction to alcohol and other drugs.

(3) Impairment of driving abilities, skills, and ~~judgement~~ judgment ~~due to~~ caused by consumption of alcohol or other drugs.

(4) Alternatives to the abuse of alcohol and the use of illicit drugs, including discussion of how abstinence, additional county requirements, ancillary services, and participation in self-help groups, assist the participant to recognize the effects of chemical dependency and understand the recovery process.

(5) The effects of alcohol or other drug use on the individual, the family, and society.

(d) The ~~Driving Under the Influence~~ DUI program shall encourage participant discussion during educational sessions.

(e) A ~~p~~Participants shall not attend more than one educational session per calendar day.

(f) The licensee shall limit attendance at educational sessions to a maximum of 35 program participants.

(g) Films shall not exceed 50% of each educational session, i.e., a two-hour educational session can show films for a maximum of one hour.

(h) Each topic or session number shall not be repeated.

(i) A counselor must be present during the entire educational session.

~~(h)~~ (j) The licensee of an 18- ~~18~~ or 30-month program shall not allow an outside persons, except an interpreters, family members, or ~~friends~~ significant other of participants to attend educational sessions conducted for participants. If the licensee allows a family members or ~~friends~~ significant other of participants to attend educational sessions, all of the following conditions shall apply:

(1) A ~~f~~ Family members and friends significant other of participants shall attend educational sessions only on a voluntary basis. A signed copy of the agreement confirming voluntary attendance by the family member or ~~friend~~ significant other shall be maintained in the appropriate participant record.

(2) The licensee shall provide a participant's family members and significant other ~~friends of participants~~, who attend educational sessions, with a copy of the program rules (including maintaining confidentiality) and shall inform the participant's family members and ~~participant's friends~~ significant others, in writing, ~~of the consequences of failure~~ that they may be prohibited from attending future educational sessions if they fail to comply with program rules. The program shall retain in the participant's record a copy of the program rules and the consequences of noncompliance, signed by the participant's family member or ~~friend~~ significant other.

(3) Attendance by a family member or ~~friend~~ significant other shall not result in an increased cost to the participant. The licensee may charge fees to the family member or ~~friend~~ significant other for attending educational sessions.

~~(j)~~ (k) The licensee shall require each participant to sign a roster at each educational session in order to verify attendance. The licensee shall maintain attendance rosters for each educational session. The ~~sign-in~~ attendance roster for each educational session shall list the following information:

- (1) Date of the session,
- (2) Starting and ending time,
- (3) Topics presented or session number,
- (4) Printed and signed names of participants in attendance, and
- (5) Signature of the program staff who conducted the session.

~~(j)~~ (l) The licensee shall document attendance at educational sessions in each participant's case record.

~~(k)~~ (m) No credit shall be given for attendance unless the participant attended the entire educational session as scheduled.

Note: Authority cited: Sections 11755 and 11836.15, Health and Safety Code.

Reference: Sections 11836.15 and 11837.4, Health and Safety Code; and Sections 23161 and 23181, Vehicle Code.

Amend § 9854 as follows:

§ 9854. Group Counseling Sessions.

(a) Group counseling sessions shall be no less than one hour and no more than two hours in length.

(1) The program may substitute one hour of individual counseling sessions for every two hours of group counseling sessions if the participant is unable to participate in or benefit from group counseling sessions because of a language barrier, an emotional problem, or other difficulty.

(2) Time allowed for breaks shall not be counted as part of the minimum time required for group counseling in Section 9851.

(b) Group counseling sessions shall be conducted by program ~~staff~~ counselors in a manner that:

(1) Encourages the participants to talk and share ideas and information in order to identify and resolve alcohol or drug related problems,

(2) Provides an opportunity for participants to examine their own personal attitudes and behavior, and

(3) Provides support for positive changes in life style to facilitate reduction or elimination of alcohol or drug problems.

(c) Group counseling sessions may emphasize a specific topic or may be less structured in nature.

(d) The licensee shall not use films or lectures to meet the number of hours of group counseling sessions required in Subsection 9851.

(e) The licensee of a first offender program shall not allow outside persons, except interpreters, to participate in group counseling sessions conducted for participants.

(f) The licensee of an 18-month or 30-month program shall not allow an outside persons, except an interpreters, a participant's family member, or ~~friends~~ a

significant other ~~of participants~~ to attend group counseling sessions conducted for the participants. If the licensee allows participant's family members and ~~friends~~ significant other ~~of participants~~ to attend group counseling sessions, the following shall apply:

(1) A ~~F~~ family members and ~~friends~~ significant other ~~of participants~~ shall attend group counseling sessions only on a voluntary basis. A signed copy of the agreement confirming voluntary attendance by a family member or ~~friend~~ significant other shall be maintained in the respective appropriate participant's record.

(2) The family members or ~~friends~~ significant other who attend group counseling sessions shall be at least 18 years old.

(3) The licensee shall provide a participant's family members and ~~friends~~ significant other ~~of participants~~, who attend group counseling sessions, with a copy of the program rules (including maintaining confidentiality) and shall inform the family members and ~~participants~~ ~~friends~~ significant other, in writing, of the consequences of failure to comply with program rules. The program shall retain in the participant's record a copy of the program rules and the consequences of noncompliance, signed by the family member or ~~friend~~ significant other.

(4) Attendance by a family member or ~~friend~~ significant other shall not result in an increased cost to the participant. The licensee may charge fees to the family member or ~~friend~~ significant other for attending group counseling sessions.

(g) Except as noted in (1) and (2) below, group counseling sessions shall be limited to 15 persons, including participants, their family members, and ~~friends~~ significant others. ~~of participants.~~

(1) On an emergency basis, as defined in (2) below, 17 participants may be included in group counseling sessions. The program shall not include more than 17 participants per group counseling sessions for any reason.

(2) As used in this Subsection, “emergency” means a sudden, unexpected occurrence or set of circumstances which could not have been avoided, prevented, or planned for by either the program or the participant.

(3) Whenever a participant is added to a group counseling session on an emergency basis, the program shall document the nature of the emergency in the participant's case record and on the sign-in roster.

(h) DUI programs may be innovative in developing additional group counseling sessions (e.g., involving family and significant others) beyond the minimum requirements contained in this section.

(i) The licensee shall require each participant to sign a roster at each group counseling session in order to verify attendance. The licensee shall maintain attendance rosters for all group counseling sessions. The attendance roster for each group counseling session shall list the following information:

(1) Date of the session,

(2) Starting and ending time,

(3) Topics discussed or session number,

(4) Written exercise to be conducted, if any, the purpose and desired outcome, and the amount of time allocated for participants to complete the exercise.

(5) Printed and signed names of participants in attendance, and

(6) Signature of the program staff who conducted the session.

(j) The licensee shall document attendance and participation at group counseling sessions in each participant record.

(k) No credit shall be given for attendance unless the participant attended the entire group counseling session as scheduled.

Note: Authority cited: Section 11836.15, Health and Safety Code; and Section 23161(b), Vehicle Code. Reference: Sections 11836.15, 11837 and 11837.4, Health and Safety Code; and Sections 23161 and 23181, Vehicle Code.

Amend § 9862 as follows;

9862. Referral to Ancillary Services.

(a) The ~~drinking driver program~~ licensee may refer participants to ancillary services, such as family counseling, ~~recovery home, inpatient services,~~ residential treatment, mental health treatment and ~~additional~~ outpatient services.

(b) Such referrals shall be voluntary, and the licensee shall document the reasons for referral ~~shall be included~~ in the participant's case record.

(c) The cost of ancillary services shall not be part of the county administrative fee, but may be part of the funds allocated to the county by the Department pursuant to section 11818 of the Health and Safety Code.

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(d) Referral to ancillary services shall not result, directly or indirectly, in increased revenues for the referring ~~drinking-driver~~ DUI program. Exceptions for good cause may be granted by the county alcohol program administrator on a case-by-case basis.

(e) Exceptions to voluntary referral to ancillary services and/or any referrals to services which require any additional fees, regardless of funding source, shall be made only on an individual basis with the approval of the county alcohol program administrator.

Note: Authority cited: Sections 11755 and 11836.15, Health and Safety Code.

Reference: Sections 11836.15 and 11837.4, Health and Safety Code.

Amend § 9866 as follows:

§ 9866. Organization and Maintenance of Participant Records.

(a) ~~Drinking-driver programs~~ The licensee shall establish a participant case folder which contains all relevant material and documentation for each participant.

(b) ~~Drinking-driver programs~~ The licensee shall maintain participant records including completed copies of all required forms and records, for a minimum of 48 months after ~~completion of services~~ the:

(1) date of transfer to another licensed program;

(2) date of dismissal from the program; or

(3) date of issuance of a Notice of Completion Certificate.

(c) ~~Drinking-driver programs~~ The licensee shall assure confidentiality of participant records and information in accordance with sections 2.1-2.67(1); Title Department of Alcohol and Drug Programs
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42, Code of Federal Regulations. A copy of those federal regulations shall be available at each program facility and can be obtained from: Superintendent of Documents, U.S. Government Printing Office, Washington D.C., 20402.

~~Superintendent of Documents~~

~~U.S. Government Printing Office~~

~~Washington D.C., 20402~~

Note: Authority cited: Sections 11755 and 11836.15, Health and Safety Code.

Reference: Section 11836.15, 11837.1 and 11837.4, Health and Safety Code.

Amend § 9867 as follows:

§ 9867. Notice of Completion Certificates.

(a) When the licensee determines that a participant has completed all program requirements and has paid all program fees, the licensee shall electronically submit the completion certificate to the Department of Motor Vehicles, or complete, by typewriter or by printing in ink, a Notice of Completion Certificate (Form DL 101, Revised 6/2003), ~~obtained from the Department of Motor Vehicles.~~

(1) The Notice of Completion Certificate shall have a unique, pre-printed number, assigned by the Department of Motor Vehicles, and shall be completed pursuant to Title 13, California Code of Regulations, Section 120.00. ~~Title 13.~~

(2) The program director may sign the Notice of Completion Certificate or designate employees to sign pursuant to Section 120.00 of Title 13.

(A) If the program director authorizes a designee to sign a Notices of Completion Certificate on his/her behalf, the licensee shall retain in its files a copy of the written authorization.

(B) The Notice of Completion Certificate shall not be signed until the individual signing has verified that the participant has completed all program services and paid all program fees assessed in accordance with Section 9878.

(3) The licensee may charge a fee for issuing a Notice of Completion Certificate. The licensee may charge the amount established by the Department of Motor Vehicles. If there are additional costs for preparation, the licensee may submit a request for a general program fee increase in accordance with Section 9878(c).

(b) The licensee ~~may~~ shall withhold the Notice of Completion Certificate in accordance with Section 9878~~(h)~~ (l) until the participant has paid in full his/her assessed program fee and any additional fees.

(c) The licensee shall maintain a program log, typed or printed in ink, to record the receipt, issuance, and/or other disposition of each numbered Notice of Completion Certificate. At the licensee's option this program log may be in electronic format if a certificate is issued electronically. The log shall contain, at a minimum, the information listed in Subsection (g)(~~3~~ 5) of this regulation.

(d) If the licensee makes an error while completing the Notice of Completion Certificate, the licensee shall:

(1) Write "VOID" in large letters across all copies of the Notice of Completion Certificate;

(2) Store the voided copies of the Notice of Completion Certificate in sequential order in the program log; and

(3) Note in the program log that the Notice of Completion Certificate was voided.

(4) Inform the Department of Motor Vehicles of the Notice of Completion Certificate numbers voided. The licensee shall report all voided Notices of Completion Certificates to the Department of Motor Vehicles on a monthly basis.

(e) When the licensee receives a book of Notices of Completion Certificates that contains one or more notices that were damaged during manufacturing or shipping, the licensee shall either void the individual damaged notices and use the remaining notices in the book, or immediately return the entire book of 50 to the Department of Motor Vehicles pursuant to Section 120.00 of Title 13.

(f) The licensee shall destroy a voided Notices of Completion Certificate only after Department staff ~~or county staff~~ have reviewed the Notices of Completion Certificate during an on-site compliance review, and have authorized, in writing, ~~their~~ its destruction.

(1) The method of destruction shall render the voided Notices of Completion Certificate useless.

(2) The written authorization for destruction shall contain the following information:

(A) The program name and license number;

(B) The date of review;

(C) The period reviewed;

(D) The printed numbers of Notices of Completion Certificate reviewed;

(E) The printed numbers of a voided Notices of Completion Certificate authorized for destruction;

(F) The name, title, and signature of the Department or county staff person conducting the on-site compliance review.

(G) The printed numbers of voided Notices of Completion Certificate destroyed;

(H) The date of destruction;

(I) The method of destruction; and

(J) The name, title, and signature of program director.

(3) The program shall retain the written authorization for destruction with the program log for four years from the date of destruction.

(g) Within ten days after the date that a participant completes all program services and has paid his/her assessed program fee and any additional fees, the licensee shall:

(1) Issue the original ~~copy of the~~ Notice of Completion Certificate in the name of the participant and immediately ~~mail~~ submit it to the Department of Motor Vehicles pursuant to Section 120.00 of Title 13.

(2) ~~Issue~~ Provide the court copy to the court of conviction (if the participant was referred by the court and the court requires a copy);

(3) ~~Give~~ Provide the participant copy to the participant, If the licensee electronically transmits the Notice of Completion Certificate directly to the Department of Motor Vehicles, or provide a receipt to the participant;

(4) Retain the program copy of the Notice of Completion Certificate in the participant's record; ~~;~~ and

(5) Enter the following information into the program log in sequential order by printed Notice of Completion Certificate number or by the number assigned by the Department of Motor Vehicles if submitted electronically to the DMV. ÷

(A) The printed number of the Notice of Completion Certificate;

(B) The name of the participant for whom the Notice of Completion Certificate was issued;

(C) The length and type of DUI program completed;

(D) The date the Notice of Completion Certificate was issued;

(E) The name of the program staff person who issued the Notice of Completion Certificate;

(F) The participant record identification number, if applicable.

(h) If the Department of Motor Vehicles copy of a Notice of Completion Certificate has been lost or destroyed, the licensee shall issue a duplicate Notice of Completion to the Department of Motor Vehicles under the following circumstances:

(1) A duplicate Notice of Completion Certificate shall be issued only by the licensee that issued the original Notice of Completion Certificate;

(2) Before issuing the duplicate Notice of Completion Certificate, the licensee shall verify from its records that the participant actually completed all program services;

(3) The licensee shall type or print the words “duplicate Notice of Completion Certificate” and the number of the original Notice of Completion Certificate on the top of all copies of the duplicate Notice of Completion Certificate;

(4) The licensee may charge the participant a fee for issuing a duplicate Notice of Completion Certificate to the Department of Motor Vehicles on behalf of the participant. The licensee may charge the cost of the notice established by the Department of Motor Vehicles. If there are additional costs for preparation, the licensee may submit a request for a general program fee increase in accordance with Section 9878(c).

(i) At the time the licensee receives a book of blank copies of the Notice of Completion Certificate from the Department of Motor Vehicles, the licensee shall inspect the book of notices to ensure the full order is included and undamaged and record the sequential numbers of the certificates received and secure the blank Notices of Completion Certificates and the record of blank certificates received in a locked desk, file, or cabinet which is not accessible to program participants.

(j) The licensee shall issue Notices of Completion Certificate only for participants who have completed all program requirements, including payment in full of program fees, contained in Article 1 (commencing with Section 9848), Subchapter 3 of this Chapter.

(k) The licensee shall issue a Notice of Completion Certificate only for the type of program specified on the license issued by the Department.

(l) The licensee shall not sell or transfer a Notices- of Completion Certificates to another licensee or to any other entity.

(m) If the licensee discovers that ~~any~~ a blank Notices of Completion Certificate ~~have~~ has been lost, stolen, or otherwise misplaced, by the close of business of

the day following the date the licensee discovers the loss, the licensee shall report the loss pursuant to Section 120.02 of Title 13.

(1) The licensee shall identify in the written report the following information:

(A) The printed numbers of the lost, stolen, or misplaced Notices of Completion Certificates, and

(B) The date the loss was discovered.

(2) The licensee shall retain in its business records a copy of the written report and a copy of the police or sheriff's department report until Department staff or county staff have reviewed the reports during an on-site compliance review, and authorized in writing their destruction.

(n) Within ten days of the date that the licensee ceases program operation or the date that the program's license is revoked, the licensee shall return to the Department of Motor Vehicles by certified mail its unused supply of blank Notices of Completion Certificates.

(o) When a participant is eligible for a Notice of Completion Certificate, but the licensee ceases program operation or the program's license is revoked, and the program's records are transferred to the county, the county alcohol and drug program administrator shall prepare a letter to the Department of Motor Vehicles, stating that the participant has completed all program services.

(1) The letter shall take the place of a Notice of Completion Certificate.

(2) The letter shall contain the following information:

(A) The participant's name, address, birth date, and driver's license number;

(B) The date the participant enrolled in the program;

- (C) The date the participant completed all program services;
- (D) The name, primary business address, and Department's license number of the licensee which would have issued the Notice of Completion if the licensee were still in business;
- (E) The length and type of program completed; and
- (F) The court case number or docket number, if applicable.
- (p) If the licensee fails to account for all Notices of Completion Certificates, as set forth in (c), (d)(3), (g)(5), (i), (j), (k), (l), or (m) of this regulation, by 5 p.m. on the ~~final day of the on-site monitoring visit~~, the certificates are determined to be missing, the Department shall assess a fine against the licensee of \$150 per day up to a total of ~~\$5,000~~ 1,500 for each missing Notice of Completions-Certificate.
- (1) The fine shall accrue from the last day the certificates are determined to be missing ~~of the onsite review~~ until the missing certificates have been accounted for and shall be payable upon receipt of written notice from the Department.
- (2) The licensee may appeal the assessed fine as specified in Section ~~9830~~ 9836.
- (q) The licensee shall post a notice in a prominent location in the program reception area, informing program participants and staff that soliciting or accepting a bribe, or selling a Notice of Completion Certificate, is illegal and punishable by law.
- (r) The Department may initiate administrative action pursuant to Section 9834 to suspend or revoke the license of any licensee who is found responsible for the sale of a Notice of Completion Certificate or whose failure to exercise diligence to

control, track, and document the issuance of a Notice of Completion Certificate has contributed to the sale of a Notice of Completion Certificate. The licensee may appeal such administrative action pursuant to Section 9836 and the provisions of Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code.

(s) To the extent possible, any appeal of a fine or civil penalty assessed pursuant to this regulation and an appeal of any related administrative action shall be joined in a single proceeding.

Note: Authority cited: Sections 11755 and 11836.15, Health and Safety Code.
Reference: Sections 11836.15 and 11838.1, Health and Safety Code; and Section 13353.45, Vehicle Code.

Amend § 9868 as follows:

§ 9868. Proof of Enrollment Certificates.

(a) The licensee shall issue a Proof of Enrollment Certificate (Form DL 107, Revised 6-02) to the Department of Motor Vehicles upon a ~~participant's~~ request at any point during the period of enrollment, ~~if the participant presents documentation from the Department of Motor Vehicles indicating that he/she is eligible for a restricted driver license. If the participant is eligible to receive a restricted driver license and has requested a Proof of Enrollment certificate, t~~ The licensee shall complete the certificate in electronic format, or by typewriter or by printing legibly in ink. The Proof of Enrollment shall have a unique, pre-printed

number, assigned by the Department of Motor Vehicles, and shall be completed and issued pursuant to Section 120.01 of Title 13.

(1) The program director may sign the Proof of Enrollment e Certificates and may designate up to two employees to sign the certificates.

(A) If the program director authorizes a designee to sign a Proof of Enrollment Certificate on his/her behalf, the licensee shall retain in its files a copy of the written authorization.

(B) The Proof of Enrollment Certificate shall not be signed until the individual signing has verified that the participant has completed enrollment forms including a participant contract and fee payment agreement.

(b) The licensee shall maintain an electronic program log, or a hard copy log that is typed or printed in ink, to record the receipt, issuance and/or other disposition of each numbered Proof of Enrollment Certificate. ~~The log shall contain, at a minimum the information listed in Subsection (e)(2) of this regulation.~~ If the program log is maintained electronically, the licensee shall enter the following information into the program log in sequential order by printed Notice of Completion Certificate number or by the number assigned by the Department of Motor Vehicles if submitted electronically to the DMV.

(1) The printed number of the Proof of Enrollment Certificate;

(2) The name of the participant for whom the Proof of Enrollment Certificate was issued;

(3) The length and type of DUI program enrolled;

(4) The date the Proof of Enrollment Certificate was issued;

(5) The name of the program staff person who issued the Proof of Enrollment Certificate;

(6) The participant record identification number, if applicable.

(c) If the licensee makes an error while completing the Proof of Enrollment Certificate, the licensee shall:

(1) Write "VOID" in large letters across the original and all copies of the Proof of Enrollment Certificate;

(2) Store the voided copies of the Proof of Enrollment Certificate in sequential order in the program log; ~~and~~

(3) Note in the program log that the Proof of Enrollment Certificate was voided- ; and

(4) Inform the Department of Motor Vehicles of the Proof of Enrollment Certificate numbers voided. The licensee shall report the voided Proofs of Enrollment to the Department of Motor Vehicles on a monthly basis.

(d) The licensee shall destroy voided Proof of Enrollment ~~e~~ Certificates only after Department staff ~~or county staff~~ have reviewed the Proof of Enrollment ~~e~~ Certificates during an on-site compliance review, and have authorized, in writing, their destruction. The method of destruction shall render the Proof of Enrollment ~~e~~ Certificates useless.

(e) When the licensee receives a book containing one or more Proof of Enrollment ~~e~~ Certificates ~~that~~ that were damaged during manufacturing or shipping, the licensee shall either immediately return the entire book of 50 to the

Department of Motor Vehicles or void the individual damaged Proof of Enrollment ~~e~~ Certificates and use the remaining ones in the book.

(1) To return the entire book to the Department of Motor Vehicles the licensee shall:

(A) Submit the entire book to the Department of Motor Vehicles, with a written request for free replacement; and

(B) Note in the program log that the Proof of Enrollment ~~e~~ Certificates were damaged and returned to the Department of Motor Vehicles.

(2) To void and destroy the damaged certificates, the licensee shall:

(A) Write “void” through the damaged certificates;

(B) Obtain a signed written authorization for destruction from a Department ~~or~~ ~~county~~ staff person during an on-site review. The authorization for destruction shall contain the following information:

1. The program name and license number;
2. The date of review;
3. The period reviewed;
4. The printed numbers of the Proof of Enrollment ~~e~~ Certificates that were reviewed;
5. The printed numbers of void Proof of Enrollment ~~e~~ Certificates that were authorized for destruction;
6. The name, title, and signature of the Department ~~or~~ ~~county~~ staff person conducting the on-site compliance review;

7. The printed numbers of the void Proof of Enrollment eCertificates that were destroyed;

8. The proposed date of destruction;

9. The method of destruction to be used; and

10. The name, title, and signature of the DUI program director.

~~(3-)~~ The licensee shall destroy the damaged certificates after a Department ~~or~~ ~~county~~ staff person reviews and signs the authorization for destruction.

(4) The program shall retain the written authorization for destruction with the program log for four years from the date of destruction.

(f) If an eligible participant requests a Proof of Enrollment Certificate because the participant was referred by the court and the court requires a copy, the licensee shall:

(1) Issue the original copy of the Proof of Enrollment Certificate to the Department of Motor Vehicles;

(2) Issue the court copy to the court of conviction;

(3) ~~Give~~ Provide the participant copy to the participant; ~~or a receipt, if submitted electronically;~~

(4) Retain the program copy in the participant's record; and

(5) Enter the following information into the program log in sequential order by printed Proof of Enrollment Certificate number: or by date if submitted electronically.

(A) The printed number of the Proof of Enrollment Certificate;

(B) The name of the participant to whom the Proof of Enrollment Certificate was issued;

(C) The date the Proof of Enrollment Certificate was issued;

(D) The name of the program staff person who issued the Proof of Enrollment Certificate;

(E) The participant record identification number, if applicable.

(g) If a Proof of Enrollment Certificate issued to the Department of Motor Vehicles has been lost or destroyed, the licensee shall issue a duplicate Proof of Enrollment to the Department of Motor Vehicles.

(h) At the time the licensee receives a book of blank copies of the Proof of Enrollment Certificates from the Department of Motor Vehicles, the licensee shall inspect the book of certificates to ensure the full order is included and undamaged and record the sequential numbers of the certificates received. The licensee shall maintain a record of certificates received in a separate location from the Proof of Enrollment eCertificates and shall secure the blank Proof of Enrollment certificates in a locked desk, file, or cabinet which is not accessible to program participants.

(i) The licensee shall issue a Proof of Enrollment eCertificates exclusively to participants who have enrolled pursuant to Section 9848.

(j) The licensee shall issue a Proof of Enrollment e Certificate only for the type of program specified on the license issued by the Department.

(k) The licensee shall not sell or transfer a Proof of Enrollment eCertificates to another licensee or to any other entity.

(l) If the licensee discovers that ~~any~~ a blank Proof of Enrollment ~~e~~Certificates have been lost, stolen, or otherwise misplaced, the licensee shall report the serial numbers of the lost certificates to the Department of Motor Vehicles pursuant to Section 120.02 of Title 13.

(1) The licensee shall identify the following information in the written report and program log:

(A) The printed serial numbers of the lost, stolen, or misplaced Proof of Enrollment ~~e~~Certificates, and

(B) The date the loss was discovered.

(2) The licensee shall retain in its business records a copy of the written report and a copy of the police or sheriff's department report until Department staff ~~or~~ county staff have reviewed the reports during an on-site compliance review, and they have authorized in writing the destruction of the reports.

(m) Within ten days of the date that the licensee ceases program operation or the date that the program's license is revoked, the licensee shall return to the Department of Motor Vehicles by certified mail its unused supply of blank Proof of Enrollment ~~e~~Certificates.

Note: Authority cited: Sections 11755 and 11836.15, Health and Safety Code.

Reference: Section 11836.15, Health and Safety Code.

Amend § 9874 as follows:

§ 9874. Program Sobriety.

(a) The licensee shall require a program participants to maintain program sobriety. As used in this chapter, “program sobriety” means that participants shall not attend program services or activities or be on the program premises while under the influence of any amount of alcohol or drugs as defined in this regulation, or be convicted of a subsequent DUI offense while enrolled in a DUI program.

(b) If a participant is sleeping, disruptive, belligerent, or otherwise appears unable to pay attention and participate in program services or activities, or a participant smells of alcohol or any alcoholic beverage, the licensee shall determine whether the participant is under the influence of alcohol or drugs as specified in (c) and (d) of this regulation.

(c) The licensee shall determine whether the participant is under the influence of alcohol either by (1) or (2) below:

(1) The licensee may require the participant to submit to testing with a breathalyzer or other similar chemical screening device designed to measure alcohol on the breath.

(A) The packaging for the screening device shall indicate approval for such use by the U.S. Department of Transportation.

(B) If the screening device indicates an alcohol level higher than .01 percent, the participant shall be determined to be under the influence of alcohol.

~~(2) Two or more staff members may document in writing in the participant's program record that the participant is sleeping, disruptive, belligerent, or otherwise appears unable to pay attention and participate in program services or activities, or the participant smells of alcohol or any alcoholic beverage.~~

~~(e)~~ (2) The licensee shall determine that the participant is under the influence of drugs if { two or more program staff document in writing in the participant's program record that they observed a combination of appearance, behavior, and speech indicators. Such symptoms may include the following, as listed in the most current version of Chapter 3 of the Driving under the Influence Enforcement Manual developed by the California Highway Patrol ~~(revised 1995)~~: constricted or dilated pupils; slurred or rapid speech; impaired coordination; body tremors; green coating on the tongue; paranoid hallucinations; muscle rigidity; confused, disordered, or dizzy appearance; agitated behavior; or lethargy, stupor, or blank stare.

(1) The Driving under the Influence Enforcement Manual is available from the Publications Unit of the California Highway Patrol at 860 Stillwater Road, West Sacramento, CA 95605-1649 (telephone 916/375-2101).

(2) Chapter 3 of the California Highway Patrol's Driving under the Influence Enforcement Manual ~~(Revised August 1995) is hereby incorporated by reference.~~ ~~The Manual~~ may be obtained by calling the Publications Unit of the California Highway Patrol at (916) 375-2101.

~~(e)~~ (d) If the licensee determines that the participant is under the influence of drugs, as specified in (d) of this regulation, the licensee shall:

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(1) Advise the participant that he/she may obtain a drug test at his/her own expense in order to refute the determination of ~~use of illicit drugs~~ drug use. The licensee shall accept the test results provided:

(A) The drug screening test was conducted by a clinical laboratory licensed by the Department of Health Services pursuant to Section 1265 of the Business and Professions Code;

(B) The drug screening test was conducted within 24 hours of the time that the licensee or his/her staff determined that the participant was under the influence of drugs.

(2) Ask the participant to leave the program premises.

(A) The licensee shall advise the participant not to drive him/herself home.

(B) The licensee shall offer to call a friend or relative of the participant or a taxi cab (at the participant's expense) to drive the participant home.

(3) Document in the participant's record how the licensee determined that the participant was under the influence of alcohol or drugs, including staff observations of the indicators listed in (b) of this regulation.

~~(f)~~ (e) Except as specified in (g) of this regulation, the licensee shall dismiss the participant pursuant to Section 9886 if the licensee determines that the participant has used alcohol or illicit drugs [based on the criteria contained in ~~(b)~~ (c) of this regulation.]

~~(g)~~ (f) The licensee shall not dismiss a participant from the program for using medication prescribed by a licensed physician and used in accordance with the prescription unless the participant is unable to participate in program services

due to the effects of the medication (e.g. falling asleep, unable to pay attention, etc.)-

(g) The licensee shall not conduct testing on a random basis.

Note: Authority cited: Sections 11755 and 11836.15, Health and Safety Code.

Reference: Sections 11837.1, 11837.3(d)(2), and 11837.4, Health and Safety Code.

Amend § 9876 as follows:

§ 9876. Participant Attendance.

(a) The program shall require each participant to attend all scheduled activities unless the participant has:

(1) Contacted the program and arranged to attend an activity at an alternate time,

or

(2) Been granted an approved leave of absence, pursuant to Section 9876.5.

(b) The program shall document all absences in the participant's record.

(c) The program shall require each participant to make up all absences before issuing the participant a Notice of Completion Certificate (Department of Motor Vehicles Form DL 101).

(d) The program may allow a participant to be absent from scheduled activities as specified below:

(1) A participant required by the court pursuant to Vehicle Code Sections 23103.5(e) or ~~32140~~ 23140 to attend the educational component of a licensed program shall not be allowed more than two absences per period of enrollment.

For purposes of this regulation, "period of enrollment" means the period from
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initial enrollment to completion or termination. A transfer from one program to another, with no break in enrollment, counts as one period of enrollment.

(2) A participant of a first offender program shall not be allowed more than five total absences per period of enrollment;

(3) A first offender, who has been ordered by the court to participate in a ~~multiple offender~~ DUI program for six months or longer, shall not be allowed more than seven absences per period of enrollment;

(4) A participant of an 18-month ~~multiple-offender~~ DUI program shall not be allowed more than ten total absences per period of enrollment; and

(5) A participant of a 30-month ~~multiple-offender~~ DUI program shall not be allowed more than fifteen total absences per period of enrollment.

Note: Authority cited: Sections 11755 and 11836.15, Health and Safety Code.

Reference: Sections 11836.15 and 11837.4, Health and Safety Code.

Amend § 9876.5 as follows:

§ 9876.5. Leave of Absence.

(a) The program shall require the participant to request a leave of absence whenever the participant is unable to attend any scheduled program activities for 21 days or longer. Participants may request a leave of absence for less than 21 days.

(b) To request a leave of absence, the participant shall submit to the program a written request for leave of absence, and any documentation substantiating the need for a leave of absence. The written request shall specify:

- (1) The name of the participant,
- (2) The reason for requesting the leave of absence, and
- (3) The dates of the requested leave of absence.

(c) The program shall require the participant to request prior approval for all leaves of absence, unless unable to do so due to circumstances beyond the participant's control. If the participant requests retroactive approval for a leave of absence, in addition to the information listed in Subsection (b) of this section, the request for leave of absence shall explain the circumstances that prevented the participant from requesting prior approval.

~~(d) The program shall submit the written request for leave of absence and any documentation substantiating the need for a leave of absence to the county alcohol program administrator or his/her designee and shall retain a copy of the request in the participant record. For purposes of this section, "designee" means a county employee under the supervision of the county alcohol program administrator or a drinking driver program administrator, who has been designated by the county alcohol program administrator to approve requests for leaves of absence on his/her behalf.~~

~~(e)~~ (d) The county alcohol program program director/administrator or his/her designee shall review the request.

~~(f)~~ (e) The ~~county alcohol~~ program administrator or his/her designee shall approve a leave of absence only for:

(1) Military personnel whose orders or responsibilities require an extended absence;

(2) Participants whose work requires travel for an extended period of time;

(3) Participants who are absent due to their own extended illness or medical treatment or that of a family member;

(4) Participants who are incarcerated or participating in a residential alcoholism or drug abuse recovery or treatment program;

(5) Participants who cannot participate in program services due to an extreme personal hardship or family emergency. The program shall document in the participant's record the nature of the personal hardship or family emergency; and

(6) Participants who have requested a leave of absence for a vacation. A leave of absence shall be granted for a vacation only if the participant has made up all absences and paid all outstanding fees, assessed by the program in accordance with the participant's ability to pay, pursuant to Section 9878(a), prior to the leave of absence.

~~(g)~~ (f) Prior to program completion, the program shall require the participant to make up all scheduled program activities missed while on a leave of absence.

~~(h)~~ (g) Time missed while on a leave of absence shall not be counted as participation time.

Note: Authority cited: Sections 11755 and 11836.15, Health and Safety Code.

Reference: Sections 11836.15, 11837 and 11837.4, Health and Safety Code.

Amend § 9878. Participant Fees

§ 9878. Participant Fees.

(a) For purposes of this regulation, the term “participant” includes both individuals who are enrolled and are participating in the DUI program and individuals who are in the process of enrolling in the DUI program.

(b) Except as specified in (d) below, the licensee shall set participant fees at a level sufficient to cover the cost of program services, including each participant’s share of personnel and operating expenses incurred by the program in providing program services.

~~(a)~~ (c) The licensee shall charge only the program fee and any additional fees that have been approved by the Department pursuant to this section of regulation. The licensee shall not increase program fees unless a request has been submitted to the county alcohol and drug program administrator and submitted and approved by the Department.

(1) In order to request to increase program fees or additional fees, the licensee shall submit the following to the Department in writing:

(A) A cover letter indicating the proposed program fee and the rationale for the increase.

(B) A line item revenue and expenditure report for the prior fiscal year.

(C) A projected line item budget reflecting the proposed fee increase for the next fiscal year.

(D) A breakdown of the proposed program fee by unit of service.

(E) A revised payment agreement that includes the proposed fee increase.

(F) A standardized payment schedule in accordance with section 9878(d) of this section.

(2) The county alcohol and drug program administrator shall have 30 days from receipt of a request to review the request and forward it to the Department along with a recommendation to approve or disapprove the request to increase program fees based on the following criteria:

(A) The licensee's rationale for requesting the fee increase, such as increases in staff salaries or rent, facility improvements, etc.

(B) The accuracy of the licensee's representation of revenues and expenses provided, based on the county's last review and/or audit of the licensee's records, and;

(C) Whether the proposed increase results in exceeding the profit or surplus limit established by the Department pursuant to (b) of this regulation.

(3) If the county alcohol and drug program administrator fails to forward the request and his/her recommendation to the Department within 30 days from receipt of the request, the licensee may submit the request directly to the Department for approval.

(4) The Department shall have 30 days from receipt of the request to either approve or deny the requested program fee increase. In making the decision, the

Department shall consider criteria described in subsection (a)(2) of this regulation. If the Department approves a fee increase request that is contrary to the recommendation made by the county alcohol and drug program administrator, the Department shall address each of the county's objections in the approval letter. In the event that the county alcohol and drug program administrator fails to forward the request as described in (a)(3), the Department may act without the administrator's recommendation.

~~(b) Program profit or surplus shall not exceed 10 percent of gross revenue from fees per annum.~~

~~(c) Notwithstanding Subsection (b) of this regulation, the program fee shall be set at a level sufficient to cover the cost of program services, including each participant's share of personnel and operating expenses incurred by the program in providing program services. All exceptions to this standard require the approval of the Department, in accordance with Subsections 11837.8(b) and (c) of the Health and Safety Code.~~

(d) The program shall establish and use a standardized payment schedule, approved by the Department in accordance with this subsection, to determine each participant's assessed program fee and schedule for payment of fees. As used in this regulation, the term "participant" includes both program participants and potential participants, who have not yet been enrolled in accordance with Section 9848.

(1) The standardized payment schedule shall specify:

(A) The program fee and additional fees, broken out by cost of unit of service;

(B) The monthly income level at which the program shall require the participant to pay a maximum program fee of no more than \$5.00 per month, in accordance with Subsection (f)(1) of this regulation;

(C) The monthly income level at which the program shall allow the participant to extend payment of the program fee or shall reduce the participant's assessed program fee through one of the options described in Subsection (f)(3) of this regulation;

(D) The option the program has elected to use, in accordance with Subsection (f)(3) of this regulation;

(E) A schedule for payment of fees, including the amount of down payment and the amount and frequency of payments required;

(F) A sample of the participant contract containing the terms and conditions for a fee assessment and a payment schedule.

(2) The program shall apply the standardized payment schedule equally in determining the participant's assessed program fee and payment schedule.

(3) The program shall submit the standardized payment schedule to the Driving Under the Influence Program Branch (DUIPB), Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA ~~95814~~ 95811, for review and approval:

(A) Prior to using the standardized payment schedule, and

(B) Whenever the program modifies the standardized payment schedule.

(4) The DUIPB shall review the standardized payment schedule developed by the program to determine if it complies with the requirements of this regulation

and Section 11837.4 of the Health and Safety Code. Within 30 days of the date of the Department receives the standardized payment schedule, the DUIPB shall:

(A) Notify the program that the standardized payment schedule was approved and the date of approval, or

(B) Notify the program that the standardized payment schedule was not approved.

(5) If the DUIPB disapproves the standardized payment schedule submitted by the program, the notice of disapproval shall inform the program how the standardized payment schedule must be amended in order to be approved and shall explain the program's right of appeal in accordance with this regulation.

(6) Within ~~fifteen (15)~~ 15 days of the date shown on the written notice of disapproval, the program shall submit:

(A) An amended standardized payment schedule to the DUIPB, or

(B) A written request for appeal of the DUIPB's decision to the Director, Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA ~~95814~~ 95811.

(7) If the program submits an amended standardized payment schedule, the DUIPB shall review it in accordance with Subsection (d)(4) of this regulation.

(8) If the program submits a written request for appeal, within ~~fifteen (15)~~ 15 days of the receipt of the request the Director or his/her designee shall:

(A) Review the DUIPB's decision and any subsequent documentation regarding the appeal, which was submitted by the program, and

(B) Notify the program in writing of his/her decision.

(9) Pending approval of the program's standardized payment schedule, the program shall collect the program fees using the most recent standardized payment schedule approved by the DUIPB. This requirement shall not preclude the right of any participant to have his/her program fee modified in accordance with Subsection (f) of this regulation.

(e) The program shall document the participant's assessed program fee and payment schedule in the participant contract signed at enrollment. The program shall amend the contract to reflect any subsequent increase or decrease in the assessed program fee or the payment schedule.

(f) If the participant notifies the program that he/she is not able to pay the fee shown on the standardized payment schedule, the program shall perform a financial assessment, in accordance with Section 9879, and shall allow the participant to participate in the program as follows:

(1) If the participant's monthly income is equal to or less than the general assistance benefit level for one person, established by the county board of supervisors pursuant to Part 5 (commencing with Section 17000) of the Welfare and Institutions Code, the program shall assess the participant a maximum program fee of no more than \$5.00 per month for each month in which the participant's income is equal to or less than the general assistance benefit level for the county in which the program is licensed to provide services. The assessed program fee shall be applicable for each month in which the participant is enrolled in the program for one or more calendar days.

(A) At least once a year, on or before July 1, the program shall request written notification of the current general assistance benefit level from the county alcohol and drug program administrator or the county board of supervisors. The program shall retain a copy of the notification in its files and shall send a copy of the notification to the Department by October 1 of the same year.

(B) If the county board of supervisors has not established a general assistance benefit level, the program shall assess the participant a maximum program fee of no more than \$5.00 per month for each month in which the participant's monthly income is \$300 or less.

(C) If the participant is eligible for a maximum program fee of no more than \$5.00 per month, the program shall assess only the following additional fees:

The program may assess a maximum additional fee of no more than \$5.00 each time it must reschedule a program service because the participant failed to attend or reschedule in advance, in accordance with the requirements of Section 9876.

~~The program may assess a maximum additional fee of no more than \$10.00 each time it reinstates a participant who was dismissed from the program, in accordance with Section 9886, or who voluntarily withdrew from the program.~~

The program may assess a maximum fee of \$5.00 for processing a transfer to another licensed DUI program.

(2) If the participant's monthly income is greater than the general assistance benefit level for the county, the program shall determine if it is equal to or less than 35 percent of the monthly median family income for the county, as shown on

the most recent decennial census obtained from the county planning department or from the State Census Data Center, Department of Finance, 915 L Street, Sacramento, CA ~~95814~~ 95811.

(3) If the participant's monthly income is greater than the general assistance benefit level for the county but equal to or less than 35 percent of the monthly median family income for the county, the program shall allow the participant to extend payment of the program fee [i.e. the extended payment option, described in Subsection (f)(3)(D) of this regulation] or shall reduce the participant's assessed program fee [i.e. the reduced fee option, described in Subsection (f)(3)(E) of this regulation].

(A) The program shall elect to use either the extended payment option or the reduced fee option and shall use the option it has elected for all participants whose monthly income is greater than the general assistance benefit level for the county but equal to or less than 35 percent of the monthly median family income for the county.

(B) The program shall notify the Department in writing of which option it elects to use.

(C) A program may change its election of an option any ~~any~~ time. To do so the program shall submit a written request for approval to the Driving-Under-the-Influence Program Branch (DUIPB), Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA ~~95814~~ 95811, at least 30 days prior to the effective date of a proposed change. In accordance with Subsection (d)(4) of this regulation, the DUIPB shall review the request to determine that it complies with

the requirements of this regulation. The DUIPB shall notify the program, in writing, of its decision. The program shall not implement the change until it receives approval from the DUIPB.

(D) If the program elects to use the extended payment option, the program shall assess the participant the full program fee shown on the program's standardized payment schedule. The program shall allow the participant to extend payment of his/her assessed program fee as follows:

The program shall allow a participant in a three-month program no less than six months from the date of enrollment to pay the program fee.

The program shall allow a participant in a six-month program no less than nine months from the date of enrollment to pay the program fee.

The program shall allow a participant in a nine-month program no less than 12 months from the date of enrollment to pay the program fee.

The program shall allow a participant in a 12-month program no less than 15 months from the date of enrollment to pay the program fee.

The program shall allow a participant in a 18-month program no less than 18 months from the date of enrollment to pay the program fee.

The program shall allow a participant in a 30-month program no less than 30 months from the date of enrollment to pay the program fee.

(E) If the program elects to use the reduced fee option, the program shall assess the participant's program fee as follows:

The program shall divide the participant's annual gross income by 35 percent of the county median family income to determine the percentage of the program fee to be paid by the participant.

The program shall multiply the resulting percentage by the program fee, shown on the program's standardized payment schedule, to determine the dollar amount of the participant's assessed program fee.

For example:

If the county median family income is \$39,035, the program would multiply \$39,035 by 0.35 to determine that 35 percent of the county median family income is \$13,662.

If the participant's income is \$10,930, the program would divide \$10,930 by \$13,662 to determine that the participant would be required to pay 80 percent of the program fee.

If the program fee is \$1,081, the program would multiply \$1,081 by 80 percent to determine that the participant's assessed program fee would be \$865.

At its option, the program may require the participant to pay his/her assessed program fee in accordance with the provisions of Subsection (f)(4) of this regulation, or the program may allow the participant to extend payments as specified in Subsection (f)(3)(D) of this regulation.

(F) If the participant's income is greater than the general assistance benefit level for the county but equal to or less than 35 percent of the monthly median family income for the county, the program shall not require the participant to pay a down payment that exceeds the cost of enrolling the participant in the program.

(4) If the participant's monthly income is greater than 35 percent of the monthly median family income for the county, the program shall assess the participant the full program fee shown on the program's standardized payment schedule. The program shall allow the participant to pay his/her assessed program fee as follows:

(A) The program shall allow a participant in a three-month program no less than three months from the date of enrollment to pay the program fee.

(B) The program shall allow a participant in a six-month program no less than six months from the date of enrollment to pay the program fee.

(C) The program shall allow a participant in a nine-month program no less than nine months from the date of enrollment to pay the program fee.

(D) The program shall allow a participant in a 12-month program no less than 12 months from the date of enrollment to pay the program fee.

(E) The program shall allow a participant in a 18-month program no less than 12 months from the date of enrollment to pay the program fee.

(F) The program shall allow a participant in a 30-month program no less than 18 months from the date of enrollment to pay the program fee.

(G) The program may require the participant to pay a down payment not to exceed 50 percent of the program fee for first offenders, or 20 percent of the program fee for multiple offenders.

(g) Except for participants who are eligible for a minimum fee of \$5.00 per month (as specified in (d) immediately above), the licensee may charge for the following additional services:

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Returned check (excluding bank charge);

Missed Activity;

Rescheduling;

Transfer-Out (excluding transfer of non-enrolled participants and administrative referrals)

Transfer-In

Reinstatement

Duplicate DL 101 (research)

Late Payment Fee

Alcohol/Drug Screening (positive results)

The licensee shall charge only for additional services shown in (g) immediately above. The licensee shall provide justification in writing to the Department for any additional service it proposes to charge. Such justification shall include the activity and time involved to perform the task, and the classification and hourly rate of pay for the staff performing the tasks.

~~(g)~~ (h) The program may allow a participant to voluntarily pay in advance for program services to be provided.

~~(h)~~ (i) The program may withhold the participant's completion certificate until the assessed program fee, ~~and any additional fees assessed have been~~ is paid in full. Withholding of the participant completion certificate shall require an agreement between the parties, to be reflected in the participant contract or an amendment to that contract. (As used in this regulation, the term "completion certificate" means the Department of Motor Vehicles' Form DL 101.)

(1) The contract or amendment shall state that the participant has been informed of (and by signing the contract shows that he/she understands) the terms and conditions of the contract, and he/she agrees that the program completion certificate will be withheld until the participant has paid the assessed program fee_ ~~and any additional fees assessed.~~

(2) The contract or amendment shall be signed by the participant and by a program representative.

(3) The program shall retain a copy of the signed contract or amendment in the participant's record.

~~(j)~~ (j) The program may allow the participant, at the program's option, to pay the program fee on a weekly, bi-weekly, or monthly basis. If the program requires the participant to pay the program fee on a weekly or bi-weekly basis, the total amount charged shall not exceed the total amount which would be required if payment were made in equal monthly payments.

~~(j)~~ (k) The program shall refund to the participant any program fee paid in advance for services the participant did not receive. Refunds to participants who have been dismissed from the program shall be issued within ninety days from the date of dismissal. In calculating the amount to be refunded to the participant, the program shall use the program fee per unit of service approved pursuant to this regulation.

~~(k)~~ (l) Prior to processing a participant's request for a transfer to another state licensed program, the program may require the participant to pay his/her

assessed program fee due for services provided by the program and any additional fees assessed in accordance with the provisions of this regulation.

~~(l)~~ (m) Prior to processing a participant's request for reinstatement to the program following a dismissal, voluntary withdrawal, or transfer, the program may require the participant to pay his/her assessed program fee due for services provided by the program, and any additional fees assessed in accordance with the provisions of this regulation.

~~(m)~~ (n) The county may assess an amount not to exceed five percent of gross program revenue per annum for its administration and monitoring of the program, in accordance with Section 9801.5. The county may assess an amount in excess of five percent of gross program revenue per annum only with approval by the Department. Such approval shall require the county to provide justification of actual costs and services. Approval shall be valid only for the fiscal year for which it is granted.

~~(n)~~ (o) Program profit or surplus shall not exceed 10 percent of gross revenue from fees per annum.

~~(n)~~ (p) The program shall maintain for Departmental review the current and previous fiscal year budget and revenue and expenditure reports.

Note: Authority cited: Section 11836.15, Health and Safety Code; and Section 23161(b), Vehicle Code. Reference: Sections 11837.4 and 11837.5, Health and Safety Code; and Sections 23161 and 23181, Vehicle Code.

Amend § 9879 as follows:

§ 9879. Financial Assessment to Determine Participant's Ability to Pay Program Fees.

(a) For purposes of this regulation, the term “participant” includes both program participants and potential participants, who have not yet been enrolled in accordance with Section 9848.

(b) The program shall post a notice at each location at which program services are provided, in a location visible to all participants and to the general public, stating that:

(1) A participant may request the program to conduct a financial assessment, in accordance with this regulation, to determine his/her ability to pay the program fee.

(2) The program shall not deny services to a participant if, based on the results of a financial assessment, the program determines that the participant is unable to pay the full program fee as shown on the standardized payment schedule.

(3) A participant may request the Department to review a financial assessment conducted by the program, in accordance with this regulation. To do so, the participant shall submit a written request to the Driving-Under-the-Influence Program Branch, Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA ~~95814~~ 95811.

(A) The Department shall review the financial assessment conducted by the program only if the participant has provided documentation of income to the program in accordance with the requirements of this regulation.

(B) The Department's review shall be limited to determining whether the program has complied with the requirements of this regulation. If the Department determines that the program has not complied with the requirements of this regulation, the Department shall issue a written notice of deficiency in accordance with Section 9824.

(c) The program shall assess the program fee and set the payment schedule based on the participant's documentation of income and a standardized payment schedule developed in accordance with Subsection 9878(d).

(d) Prior to conducting a financial assessment, the program shall:

(1) Schedule a financial assessment interview with the participant, and

(2) Notify the participant that he/she:

(A) Is required to provide documentation of his/her income, as specified in Subsections (e) and (f) of this regulation, at the time of the financial assessment interview, and

(B) Will be assessed the full program fee, as shown on the standardized payment schedule, if he/she fails to provide documentation of income at the time of the financial assessment interview.

(e) The program shall consider as income any of the following, when earned or received by the participant or any person legally required to support the participant:

- (1) Gross wages, salaries, bonuses, commissions, and tips;
- (2) Compensation for work-related expenses in excess of the actual expense;
- (3) Net profits from self employment,
- (4) Net income from real or personal property;
- (5) Spousal support;
- (6) Regular payments from Social Security, retirement, unemployment compensation, strike benefits from union funds, workers' compensation, veterans' payments, public assistance [including Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), emergency assistance money, non-federally funded general assistance or general relief money payments], educational grants, or training stipends; and
- (7) Gross personal income as reported on the federal income tax return.

(f) The program shall require any participant, who has requested a financial assessment, to provide the following documentation of income:

(1) If the participant provides an award letter from the county welfare department, confirming eligibility for general assistance, the program shall require no further documentation of income;

(2) If the participant does not provide a general assistance award letter, the program shall require him/her to provide the following documentation:

(A) An award letter from the county welfare department, or other governmental agency, documenting eligibility for other public assistance and indicating the income level on which eligibility was based; or

(B) Pay vouchers or pay stubs documenting salary for the prior two months; or

(C) Income tax returns for the prior calendar year. The licensee may require the participant to provide a transcript or letter from the Internal Revenue Service or the State Franchise Tax Board verifying the income reported on the prior year's tax return.

(3) The program may require the participant to sign a release of information authorizing the program to obtain income and wage verification from the State Employment Development Department.

(4) The program may accept other documentation of income at its option.

(5) The program shall not require documentation of income other than that specified in Subsections (f)(1), (f)(2), or (f)(3) of this regulation.

(g) If the income documentation the participant provides shows weekly income rather than monthly income, the program shall compute the participant's monthly income by multiplying the weekly income by 4.33 weeks per month. If the income documentation the participant provides shows annual income rather than monthly income, the program shall compute the participant's monthly income by dividing the annual income by 12 months per year.

(h) The program shall conduct a financial assessment interview within five days of any of the following circumstances:

(1) At the request of the participant or program, but no more frequently than every 30 days. At the time of the request, the participant shall provide:

(A) Documentation of a change in financial condition which may make the participant eligible for an adjustment of the program fee or payment schedule, or

(B) A written statement describing the need for a financial assessment.

(C) If the participant fails to attend a financial assessment interview scheduled at his/her request, the program may require the participant to wait 30 days before scheduling a subsequent financial assessment.

(i) If the participant is 15 or more days delinquent in payment of program fees approved by the Department, the program may suspend education and group counseling sessions for 15 days as shown below:

(1) At least ~~40~~ ten days prior to the period of suspension, the program shall provide the participant with a delinquency notice that contains the following information:

(A) The amount of program fees currently past due;

(B) A statement that failure to pay the delinquent amount will result in suspension of education, individual and group counseling services;

(C) A statement that failure to pay the delinquent amount by the end of the suspension period may result in an additional 30 day suspension or dismissal from the program;

(D) The procedure for disputing the accuracy of the delinquency;

(E) A statement notifying the participant of his/her right to request a financial assessment as specified in (h) of this section;

(F) A statement that failure to schedule and appear for a financial assessment may result in dismissal from the program;

(2) The suspension shall remain in effect for a maximum of 15 days or until the participant pays the delinquent amount in full, whichever occurs first.

(3) When the program suspends education, individual and group counseling activities for 15 days, the program shall concurrently issue a notification of pending suspension of all program activities or dismissal if the delinquent fees are not paid in full by the end of the 15 day suspension period.

(A) The program shall not assess fees for the services missed as a result of the 15-day suspension.

~~(B) The program shall continue to conduct face-to-face interviews as specified in Section 9858.~~

(4) If the participant fails to pay the delinquent fees in full by the end of the initial 15-day suspension period, the program may either suspend all program activities for a maximum of 30 days or dismiss the participant from the program.

(A) The program shall not assess fees for services missed as a result of the 30-day suspension.

(B) The program may dismiss a participant who was suspended and failed to pay the delinquent fees by the end of the 30-day suspension period.

(5) If the participant fails to pay the delinquent fees in full within 30 days after the due date, the program may either continue to suspend all program activities until all past due program fees have been paid in full or dismiss the participant from the program. The program shall not assess fees for services missed as a result of the suspension. If the licensee issued a DL 107 form pursuant to Section 0868, the participant shall be dismissed from the program after a 45-day suspension.

~~(5)~~ (6) Program activities missed during the period of suspension shall not be considered as failure to attend program services without a leave of absence, pursuant to Sections 9876.5(a) and 9886(a)(5). The suspension time does not count as active time in the program and the 21 day attendance rule does not apply.

(j) Following a financial reassessment, the program shall require the participant to pay for services provided by the program as shown below:

(1) When a financial reassessment determines that the participant is eligible for a maximum program fee of no more than \$5.00 per month, the program may require the participant to pay for services provided by the program prior to the date of the financial reassessment at the rate of payment which was assessed prior to the date of the reassessment.

(2) When a financial reassessment determines that the participant is no longer eligible for a maximum program fee of no more than \$5.00 per month, the program shall not require the participant to pay the program fee in excess of \$5.00 per month for services provided by the program during the period of eligibility and prior to the date of the reassessment.

(3) When a financial reassessment determines that the participant is eligible to pay the program fee through the extended payment option or the reduced fee option, described in Subsection 9878(f)(3), the program may require the participant to pay for services provided by the program prior to the financial reassessment at the rate of payment which was assessed prior to the date of the financial reassessment.

(4) When a financial reassessment determines that the participant is no longer eligible to pay the program fee through the extended payment option or the reduced fee option, described in Subsection 9878(f)(3), the program shall allow the participant to pay for services provided by the program prior to the date of the financial reassessment, at the reduced rate of payment.

(k) If a participant re-enrolls in the program following dismissal or voluntary withdrawal from the program, the program may assess the program fee at the time of re-enrollment based on the approved program fee as shown on the standardized payment schedule in effect at the time of re-enrollment, except as follows:

(1) Any increase or decrease in the assessed program fee the participant is required to pay as the result of a financial assessment shall apply only to the remaining services to be provided.

(2) The program shall not increase a participant's assessed program fee when a participant returns to active participant status following a temporary absence due to an approved leave of absence.

(~~l~~ l) The program shall amend the participant contract to reflect increases or decreases in the participant's fee resulting from a financial reassessment conducted in accordance with the provisions of this regulation.

(m) The program shall maintain in the participant record a copy of all financial assessments and documentation of income provided by the participant.

(n) A participant may request the Department to review a financial assessment conducted by the program, in accordance with this regulation. To do so, the

participant shall submit a written request to the Driving-Under-the-Influence Program Branch, Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA ~~95814~~ 95811.

(1) The Department shall review the financial assessment conducted by the program only if the participant has provided documentation of income to the program in accordance with the requirements of this regulation.

(2) The Department's review shall be limited to determining whether the program has complied with the requirements of this regulation. If the Department determines that the program has not complied with the requirements of this regulation, the Department shall issue a written notice of deficiency in accordance with Section 9824.

Note: ÷ Authority cited: Section 11836.15, Health and Safety Code; and Section 23161(b), Vehicle Code. Reference: Sections 11836.15 and 11837.4, Health and Safety Code.

Amend §9884 as follows:

§ 9884. Interprogram Transfer.

(a) The licensee shall inform a participant transferring to another licensed DUI program that he/she shall enroll and attend a face-to-face interview, an educational session, or a group counseling session in the new program within 21 days from the date of transfer from the sending program.

(b) The following requirements apply to interprogram transfers:

~~(1) Written approval of transfer shall be obtained from the county alcohol program administrators or their designees in both the sending and receiving counties.~~

~~(2) (1) Written notice of transfer shall be provided to the court of conviction by the sending program. and to the county alcohol program administrators or their designees in both the sending and receiving counties.~~

~~(3) (2) The sending program shall provide the receiving program with a completed transfer using a form approved by the Department. ~~written history for the transferee, indicating the number of program activities completed. Any additional program information relevant to the participant shall be sent under separate cover marked "confidential."~~~~

~~(4) (3) The receiving program shall not accept any transferee that who cannot enroll and commence participation services within 21 days following the date of ~~last activity with~~ transfer from the sending program.~~

~~(5) (4) The receiving program shall notify the sending program written notice of the transferee's enrollment or non-enrollment in the receiving program within 10 days of the transfer deadline specified in (3) above.~~

~~(6) The sending program shall notify the court of the transferee's enrollment or non-enrollment in the receiving program.~~

~~(7) (5) The sending program shall notify the Department of Motor Vehicles and the court of conviction if the transferee does not enroll in the receiving program.~~

~~(8)~~ (6) The receiving program shall notify the court of conviction and the Department of Motor Vehicles of the participant's subsequent completion of or dismissal from the program.

Note: Authority cited: Sections 11755 and 11836.15, Health and Safety Code.

Reference: Section 11837.2, Health and Safety Code.

Amend §9886 as follows:

§ 9886. Dismissal of Participants.

(a) The DUI program shall dismiss from the program any participant who:

(1) Fails to participate in required program activities within 21 days of transfer to another DUI program licensed by the Department;

(2) Fails to maintain program sobriety in accordance with Section 9874;

(3) Fails to comply with DUI program rules;

(4) Fails to comply with additional county requirements which have been established by the county alcohol and drug program administrator and approved by the Department in accordance with Section 9860;

(5) Fails to attend program services for 21 days or longer without obtaining a leave of absence ~~obtain a leave of absence~~, in accordance with Section 9876.5, ~~when the participant is unable to attend any scheduled program services for 21 days or longer;~~ . This section shall not apply to multiple offenders in the last six months of the 18-month program or the last twelve months of the 30-month

program;

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(6) Exceeds the number of absences allowed in Section 9876(d), ~~without a leave of absence approved in accordance with Section 9876.5;~~

(7) Fails to resume attending the program activities within 21 days of the scheduled return from a leave of absence.

~~(7)~~ (8) Is physically or verbally abusive or acts in a threatening manner to program staff or ~~other~~ program participants. ~~;~~

(b) The licensee may dismiss a participant who fails to pay his/her program fee assessed in accordance with the requirements of Section 9879 ~~or fails to reschedule and attend a financial assessment interview in accordance with the provisions of Subsection 9879(j).~~ However, the program shall not dismiss a participant, who has completed all required program services, for failure to pay program fees.

(c) If the participant was attending the program as a condition of probation or in accordance with a court order, the licensee shall notify the court that the participant was dismissed from the program. The program shall also notify the Department of Motor Vehicles if the participant has been issued a DL 107. (Proof of Enrollment Certificate)

(d) If the participant is not attending the program as a condition of ~~on~~ probation or ~~attending a program~~ in accordance with a court order, the licensee may reinstate the participant as shown below in accordance with the licensee's written policy, which shall be included in the participant contract. ~~;~~

~~(1) Thirty (30) days after the date of first dismissal,~~

~~(2) Sixty (60) days after the date of second dismissal, and~~

~~(3) Ninety (90) days after the date of third or subsequent dismissal.~~

(e) The licensee may refuse to reinstate a participant if the participant was dismissed because he/she was physically or verbally abusive to program staff or other program participants. The licensee shall document in the participant's record the circumstances under which the participant was dismissed.

(f) The licensee shall not give credit for services attended prior to dismissal if the participant has not been enrolled in a licensed program for a period of two years or longer. The licensee shall give credit for services attended prior to dismissal if:

- (1) The dismissal occurred less than two years prior to re-enrollment, and
- (2) The licensee who provided the services verifies in writing that the services were provided to the participant.

Note: Authority cited: Sections 11755 and 11836.15, Health and Safety Code.
Reference: Section 11837.1, Health and Safety Code; and Section 13352.5 of the Vehicle Code.